22221

(17,623.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1900.

No. 193.

THE INTERNATIONAL NAVIGATION COMPANY, PETITIONER,

*vs.*

THE FARR AND BAILEY MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | *a* | 1 |
| Transcript from the district court of the United States for the eastern district of Pennsylvania | 1 | 1 |
| Caption | 1 | 1 |
| Libel | 1 | 1 |
| Exhibit A—Copy of bill of lading | 3 | 3 |
| Amendment to libel | 8 | 8 |
| Answer | 9 | 9 |
| Evidence for libellant | 11 | 10 |
| Copy of bill of lading | 13 | 11 |
| Testimony of Lodge Colton | 18 | 16 |
| Letter of H. C. Bye to Farr and Bailey Manufacturing Co., June 12, 1895 | 23 | 21 |
| Letter of H. C. Bye to Farr and Bailey Manufacturing Co., July 8, 1895 | 24 | 22 |
| Testimony of S. H. Johnson | 24 | 22 |
| Lodge Colton (recalled) | 25 | 23 |


JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 5, 1900.

| | Original. | Print |
|---|---|---|
| Evidence for respondent | 32 | 30 |
| Testimony of John Miller | 32 | 30 |
| John Leach | 38 | 36 |
| Richard Donbavand | 42 | 40 |
| Thomas Kelly | 47 | 45 |
| James D. Forbes | 51 | 49 |
| James D. Forbes (recalled) | 55 | 53 |
| Henry L. Ebsen | 58 | 56 |
| J. W. Shackford | 61 | 59 |
| Henry Taggart | 66 | 64 |
| Mark K. Bowman | 76 | 74 |
| Hiram Dickson | 86 | 84 |
| Opinion of McPherson, J | 97 | 95 |
| Petition for reargument | 101 | 98 |
| Opinion of McPherson, J., after reargument | 102 | 99 |
| Decree | 105 | 102 |
| Petition for appeal | 105 | 102 |
| Assignment of errors | 106 | 103 |
| Stipulation as to printing record | 107 | 103 |
| Order taking cause under advisement | 108 | 104 |
| Opinion of Dallas, J | 109 | 104 |
| Dissenting opinion of Gray, J | 115 | 107 |
| Decree | 117 | 109 |
| Order for mandate | 118 | 109 |
| Mandate | 119 | 109 |
| Cost bill | 123 | 111 |
| Clerk's certificate | 124 | 111 |
| Writ of certiorari | 126 | 112 |
| Stipulation as to return to certiorari | 129 | 112 |
| Return to writ of certiorari | 130 | 113 |

a *Transcript of Record.*

Filed August 22, 1899.

United States Circuit Court of Appeals for the Third Circuit, Sept. Term, 1899.

THE FARR AND BAILEY MANUFACTURING COMPANY, Libellant, Appellant,
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Owner of the Steamship "Indiana," Respondent, Appellee. } No. 13.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

1 In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

THE FARR AND BAILEY MANUFACTURING COMPANY
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Owner of the Steamship "Indiana." } No. 62 of 1895.

Breach of contract of affreightment.

Pleas before the honorable the judge of the district court of the United States for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered, that on the sixteenth day of August, A. D. 1895, Horace L. Cheyney, Esq., and John F. Lewis, Esq., proctors of said court, come into said court and exhibit the libel and complaint of The Farr and Bailey Manufacturing Company against The International Navigation Company, owner of the steamship "Indiana," in a cause of contract, civil and maritime, which being read is in the words and figures following, to wit:

*Libel.*

To the Honorable William Butler, judge of the district court of the United States for the eastern district of Pennsylvania:

The libel and complaint of the Farr and Bailey Manufacturing Company, of Camden, N. J., a corporation existing under the laws of the State of New Jersey, manufacturers of floor oilcloth, against the International Navigation Company, of the city of Philadelphia, in a cause of breach of contract of affreightment, civil and maritime, alleges as follows:

1. That at the time hereinafter mentioned, The International Navigation Company, respondents, were the owners of the steam-

ship "Indiana," one of the American line of steamships plying between Liverpool and Philadelphia, and were common carriers of chattels and goods for hire.

2 2. That on or about the 21st day of May, A. D. 1895, Richardson, Spence & Company, as agents of the libellants, delivered on board the steamship "Indiana," at Liverpool, in good order and condition, ten bales of burlap or packages of merchandise, the property of libellants, which the said International Navigation Company, by their agents, in consideration of certain freight agreed to be paid thereon, agreed to safely carry to the port of Philadelphia and there deliver the same in like good order and condition unto the Farr & Bailey Manufacturing Company, in like good order and condition as appears by a copy of the bill of lading delivered to the libellants, which is attached hereto, marked Exhibit "A" and make part hereof.

3. That upon the arrival of the said steamship "Indiana" at the port of Philadelphia, the said ten bales of burlap were greatly damaged by sea water and other causes, due, as the libellants are informed, to the unseaworthiness of the steamship "Indiana" at the time of her departure from Liverpool and to the negligence and mismanagement of the said vessel by her officers and crew.

4. The said goods were damaged in the sum of two thousand and eighty-four dollars and fifteen cents.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law according to the course of this honorable court in admiralty and maritime causes may issue against the said International Navigation Company, and that they may be compelled to answer on oath all and singular the matters aforesaid, and that this honorable court will be pleased to decree payment of damages aforesaid, with interest and costs, and that they may have such other and further relief as in law and justice they may be entitled to receive.

COUNTY OF PHILADELPHIA, }
*State of Pennsylvania.* }

Edward L. Farr, being duly affirmed according to law, says that he is secretary and treasurer of the Farr and Bailey Manufacturing Company, and that the facts set forth in the foregoing libel are true to the best of his knowledge, information and belief.

(S'g'd) EDWARD L. FARR.

Affirmed and subscribed before me this ninth day of August, A. D. 1895.

BENJAMIN RUSH,
*Notary Public.*

[SEAL.]

222223



3

## EXHIBIT A.

### Copy of Bill of Lading.

Shipped, in apparent good order and condition, by Richardson, Spence & Co., Agents, to be transported by the Steamship called the "Indiana" and now lying in the Port of Liverpool, and bound for Philadelphia, with liberty to call at Queenstown, Ten packages merchandise being marked and numbered as in the margin; weight, measure, gauge, quality, condition, contents, and value unknown, and to be delivered in like good order and condition at the Port of Philadelphia, (or so near thereto as she may safely get) unto Messrs. Farr & Bailey Manufacturing Co. or to his or their assigns, he or they paying freight, primage, and charges as per margin (at the current rate of Exchange for Bankers Bills at sight on London, on the day of the Ship's arrival). General average payable according to the custom of the Port of Discharge.

It is mutually agreed that the Ship shall have liberty to sail without pilots; to tow and assist vessels in distress; to deviate for the purpose of saving life or property; that the Carrier shall have liberty to convey goods in lighters or steam tenders to and from the ship at the risk of the owners of the goods; and in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters; by fire from any cause or wheresoever occurring, by barratry of the master or crew; by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, lock-outs or stoppage of labor; by explosion, bursting of boilers, breakage of shafts or any latent defect in hull or machinery, or appurtenances; by collisions, stranding, or other accidents of navigation, of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the

pilot, master, mariners, or other servants of the shipowner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager, or by unseaworthiness of the Ship at the commencement or any period of the voyage (provided all reasonable means have been taken to provide against such unseaworthiness; nor by decay, heating, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage, arising from the nature of the goods, or the insufficiency of packages or wrappers; nor for land damage; nor for the obliteration, errors, insufficiency, or absence of marks, brands and numbers, address or description; nor for risk of craft, hulk or transhipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewellery, Precious Stones, Statuary, Mosaics, Pictures, Embroideries, Perfumeries, Works of Art, Silks, Lace, Furs, China, Porcelain, Watches, or Clocks, or for goods of any description which are above the value of $500. per package, unless bills of lading are signed therefor, with the value therein expressed, and a special agreement is made and extra freight paid.

2. Also, that Shippers shall be liable for any loss or damage to Ship or Cargo caused by inflammable, explosive or dangerous or injurious goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent; and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Shipowner is not liable for any claim notice of which is not given before the removal of the goods; nor for any claim for loss, short delivery, damage, or detention of goods, unless the ground of claim shall wholly arise while the goods are in the actual custody of the Shipowner; nor is the Shipowner in any case liable beyond the Invoice or de-

22224



5

clared value of the Goods, whichever shall be least. It is expressly stipulated that the Goods and Merchandise mentioned in this Bill of Lading, whilst being transhipped or awaiting shipment on any quay or lighter in Liverpool, or elsewhersoever, and also so soon as they are discharged over the Ship's side, shall be at the sole risk of the Shipper or Consignee. Goods which may require to be forwarded by Rail, Steamship, lighter, or otherwise to their port of shipment or to their destination from the Ship's port of discharge shall be so forwarded at Merchant's risk subject to the ordinary conditions of carriage of such Railway, Steamship, or other Carrier, or subject to any special terms required by them.

4. The Carrier shall have a lien on the goods for all freight, demurrage, damages, for detention, primage and charges, including land and water transport, charges incurred before shipment, and also for fines or damages, which the Ship or its Owners may incur, or suffer, by reason of the incorrect or insufficient markings, numbering or addressing, of packages, or description of their contents, or the dangerous or injurious nature thereof.

5. Also, that in case the ship shall be prevented from reaching her destination by Quarantine, the Shipowner may discharge the goods into any depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

6. The Goods to be taken from alongside by the Consignee immediately the vessel is ready to discharge, without reference to the state of the weather, or otherwise they will be landed and deposited at the expense of the Consignee and at his risk of Fire, loss or injury, on the Dock or Wharf, or into Hulk or Lighter, or in the Warehouse provided for that purpose, or sent to the Public Store, as the Collector at the Port of Philadelphia shall direct, and when deposited in the Warehouse, to be subject to storage, the Collector of the

Port being hereby authorized to grant a general order for discharge immediately after arrival of the Ship.

7. Also, that in case the whole or any part of the Goods specified herein be prevented by any cause from going in said Steamer, the Shipowner is not to be under any liability if he forward them by succeeding Steamers, whether of this Line, or any steamer running in connection therewith.

8. Also, that the only condition on which Glass, Earthenware, or China will be carried is, that the Carrier shall not be held liable for any loss or injury which may occur whether from negligence or any other cause whatever.

9. Also that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

10. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the Shipper.

11. Also, that this Bill of Lading, duly endorsed, be given up to the Ship's Consignee in Exchange for Delivery Order.

12. Also, that Freight Prepaid will not be returned, Goods lost or not lost.

13. Also, that parcels for different Consignees collected or made up in single packages addressed to one Consignee pay full freight on each parcel.

The liability of the carrier, under this bill of lading, shall be governed by the law of England, with reference to which law this contract is made.

And finally, in accepting this Bill of Lading, the Shipper, Owner, and Consignee of the goods, and the holder of the Bill of Lading agree to be bound by all its stipulations, exceptions and conditions, whether written or printed, as fully

as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said ship hath affirmed to 3 bills of lading, all of this tenor and date, numbered consecutively, one of which being accomplished and given up to the Carrier, the others to stand void.

Dated in Liverpool, this 21st. day of May 1895.

(Signed.) W. H. CHISHOLM.

ON MARGIN:

F 180/189 10 Bales
B DUNDEE
Through rate from
Charges . . . . . £20

Tons Cwt. Qrs. Lbs.
Freight on at per ton £
Freight on Ft. In. at per ton £
Primage per cent.
Total . . . . . £ Stg.

As per Agreement.

ON MARGIN:

The attention of Shippers is specially directed to the following extracts from the Merchant Shipping Act, 1873.

Section 23. If any person sends, or attempts to send by, or attempts to carry in any vessel any dangerous goods, *i. e.*, aquafortis, vitriol, naptha, benzine, gunpowder, lucifer matches, nitro glycerine, petroleum, or any other goods of a dangerous nature without distinctly marking their nature on the outside of the package, and giving written notice of the nature of the goods at or before the time of sending the same to be shipped or taking the same on board, he shall for every such offence incur a penalty not exceeding £100. Section 24. If any person knowingly sends, or attempts to send by, or carries or attempts to carry in any

vessel any dangerous goods, or goods of a dangerous nature, under a false description, or falsely describes the sender or carrier thereof, he shall incur a penalty not exceeding £500. By the 26th. Section the Master or Owner is empowered to throw dangerous goods overboard. By the 27th. Section such goods may be forfeited. Cargo likely to take fire, or cause damage to other goods, will therefore not knowingly be received, and Shippers of such will be liable for all consequences, and will also be prosecuted as the law directs.

---

**Amendment to Libel.**

And now, December , 1895, the libellants amend the libel as follows:

1. By substituting the word "twenty" for the word "ten" in fourth line of the second paragraph thereof.

2. By adding at the end of the second paragraph thereof "and by a bill of lading filed in the Custom House at Philadelphia."

3. By substituting the word "twenty" for the word "ten" in the second line of the third paragraph thereof.

---

**DEPOSITIONS.**

Testimony taken at the office of Messrs. Lewis & Cheyney, 430 Walnut Street, Philadelphia, October 16, 1895, at 11 o'clock, A. M.

Present—HORACE L. CHEYNEY, ESQ., for libellant.
J. RODMAN PAUL, ESQ., for respondent.

(Mr. Cheyney offers in evidence the bill of lading issued by the International Navigation Company, or their agents, to Richardson, Spence & Company, for the ten packages of merchandise in question.)

9 And afterwards, to wit, on the 31st day of July, A. D. 1896, J. Rodman Paul, Esq., one of the proctors of said court, comes into said court, and exhibits the answer of the International Navigation Company to the libel and complaint aforesaid, and the same being filed is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania.

*Answer.*

To the Honorable William Butler, judge of the said court:

The answer of the International Navigation Company to the libel and complaint of the Farr and Bailey Manufacturing Company in a cause of breach of contract, of affreightment, civil and maritime, respectfully showeth:

1. It is true as stated in the first paragraph of the libel that the International Navigation Company were in May, 1895, owners of the steamship "Indiana," plying between Liverpool and Philadelphia, and were common carriers.

2. It is true as alleged in the second paragraph of the libel that ten bales of burlap consigned to libellants were delivered on board said steamship "Indiana" on or about May 21, 1895, and that a bill of lading therefor was given to libellants (a true copy of which is attached to the said libel) by which it appears said merchandise was received on board said steamship in "apparent good order and condition."

3. That the said steamship "Indiana" at the time of sailing from Liverpool and thereafter was staunch, strong, seaworthy and well equipped in every respect and was manned by a carefully selected and experienced ship's company of master, officers and crew. On arrival at Philadelphia respondent is informed that the said goods were somewhat damaged by sea water, but that the same were greatly damaged as alleged in the said paragraph of the libel or that said damage was due to the unseaworthiness of the said steamship "Indiana" at the time of her departure from Liverpool or otherwise, and for the negligence and mismanagement of the said vessel by her officers and crew, is denied.

4. It is denied that the said goods were damaged in the sum of $2,084.15, and it is asked that strict proof of the true amount of damage, if any, be made.

5. Respondent believes that the damage to the said goods was caused by sea water entering through a dead-light side port during the voyage, which side port was closed instantly when dis-
10 covered to be opened. Said dead-light side port was closed, fastened and in perfect condition when the vessel left Liverpool, and became open several days after through some cause or agency unknown to respondent.

6. That by the said bill of lading it is provided that the carrier shall not be liable for loss or damage occasioned by perils of the sea, and the said damage was due to a peril of the sea.

7. That by the said bill of lading it was further provided that the

carrier shall not be liable for loss occasioned by accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other, servant of the ship-owner, not resulting, however, in any case from want of due diligence by the owners of the ship or by unseaworthiness of the ship at the commencement or any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness, and that the said loss or damage, if any, was occasioned by an accident of navigation or management of the steamship and not by want of due diligence on the part of the owners or by unseaworthiness and all reasonable means have been taken by said owners to provide against unseaworthiness. Wherefore, by reasons of the said proviso and by reason also of the act of Congress in such case made and provided, the respondent is not liable.

8. It is further provided by the said bill of lading that the liability of the carrier thereunder should be governed by the law of England with reference to which the contract was made; that the said contract or bill of lading was made and entered into in England, and by the law of England the said steamship and her owners are not liable for the loss and damage aforesaid.

All and singular the premises are true.

Wherefore the respondent prays that the court pronounce against the libel aforesaid and condemn the libellant in costs and otherwise right and justice administer in the premises.

INTERNATIONAL NAVIGATION CO.,
By GEO. H. HIGBEE, *Manager.*

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

George H. Higbee, the manager of the respondent company, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer are true to the best of his knowledge, information and belief.

[SEAL.] GEO. H. HIGBEE.

Sworn and subscribed before me this 31st day of July, 1896.

ARCHER McLEARN,
*Notary Public.*

11 And afterwards, to wit, on the 24th day of March, 1899, the cause came on to be heard upon libel, answer, and proofs and statements of facts, and conclusions of law, as also depositions on behalf of the respective parties are presented, read, and filed, and the said depositions are in the words and figures following, to wit:

*Depositions.*

Testimony taken at the office of Messrs. Lewis & Cheyney, 430 Walnut street, Philadelphia, October 16, 1895, at 11 o'clock a. m.

Present: Horace L. Cheyney, Esq., for libellant; J. Rodman Paul, Esq., for respondent.

(Mr. Cheyney offers in evidence the bill of lading issued by the International Navigation Company, or their agents, to Richardson, Spence & Company, for the ten packages of merchandise in question.)

## Copy of Bill of Lading.

Shipped, in apparent good order and condition, by Richardson, Spence & Co., Agents, to be transported by the Steamship called the "Indiana" and now lying in the Port of Liverpool, and bound for Philadelphia, with liberty to call at Queenstown, Ten packages merchandise being marked and numbered as in the margin; weight, measure, gauge, quality, condition, contents, and value unknown, and to be delivered in like good order and condition at the Port of Philadelphia, (or so near thereto as she may safely get) unto Messrs. Farr & Bailey Manufacturing Co. or to his or their assigns, he or they paying freight, primage, and charges as per margin (at the current rate of Exchange for Bankers Bills at sight on London, on the day of the Ship's arrival). General average payable according to the custom of the Port of Discharge.

It is mutually agreed that the Ship shall have liberty to sail without pilots; to tow and assist vessels in distress; to deviate for the purpose of saving life or property; that the Carrier shall have liberty to convey goods in lighters or steam tenders to and from the ship at the risk of the owners of the goods; and in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters; by fire from any cause or wheresoever occurring, by barratry of the master or crew; by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, lock-outs or stoppage of labor; by explosion, bursting of boilers, breakage of shafts or any latent defect in hull or machinery, or appurtenances; by collisions, stranding, or other accidents of navigation, of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the

pilot, master, mariners, or other servants of the shipowner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager, or by unseaworthiness of the Ship at the commencement or any period of the voyage (provided all reasonable means have been taken to provide against such unseaworthiness; nor by decay, heating, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage, arising from the nature of the goods, or the insufficiency of packages or wrappers; nor for land damage; nor for the obliteration, errors, insufficiency, or absence of marks, brands and numbers, address or description; nor for risk of craft, hulk or transhipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewellery, Precious Stones, Statuary, Mosaics, Pictures, Embroideries, Perfumeries, Works of Art, Silks, Lace, Furs, China, Porcelain, Watches, or Clocks, or for goods of any description which are above the value of $500. per package, unless bills of lading are signed therefor, with the value therein expressed, and a special agreement is made and extra freight paid.

2. Also, that Shippers shall be liable for any loss or damage to Ship or Cargo caused by inflammable, explosive or dangerous or injurious goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent; and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Shipowner is not liable for any claim notice of which is not given before the removal of the goods; nor for any claim for loss, short delivery, damage, or detention of goods, unless the ground of claim shall wholly arise while the goods are in the actual custody of the Shipowner; nor is the Shipowner in any case liable beyond the Invoice or de-

clared value of the Goods, whichever shall be least. It is expressly stipulated that the Goods and Merchandise mentioned in this Bill of Lading, whilst being transhipped or awaiting shipment on any quay or lighter in Liverpool, or elsewhersoever, and also so soon as they are discharged over the Ship's side, shall be at the sole risk of the Shipper or Consignee. Goods which may require to be forwarded by Rail, Steamship, lighter, or otherwise to their port of shipment or to their destination from the Ship's port of discharge shall be so forwarded at Merchant's risk subject to the ordinary conditions of carriage of such Railway, Steamship, or other Carrier, or subject to any special terms required by them.

4. The Carrier shall have a lien on the goods for all freight, demurrage, damages, for detention, primage and charges, including land and water transport, charges incurred before shipment, and also for fines or damages, which the Ship or its Owners may incur, or suffer, by reason of the incorrect or insufficient markings, numbering or addressing, of packages, or description of their contents, or the dangerous or injurious nature thereof.

5. Also, that in case the ship shall be prevented from reaching her destination by Quarantine, the Shipowner may discharge the goods into any depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

6. The Goods to be taken from alongside by the Consignee immediately the vessel is ready to discharge, without reference to the state of the weather, or otherwise they will be landed and deposited at the expense of the Consignee and at his risk of Fire, loss or injury, on the Dock or Wharf, or into Hulk or Lighter, or in the Warehouse provided for that purpose, or sent to the Public Store, as the Collector at the Port of Philadelphia shall direct, and when deposited in the Warehouse, to be subject to storage, the Collector of the

Port being hereby authorized to grant a general order for discharge immediately after arrival of the Ship.

7. Also, that in case the whole or any part of the Goods specified herein be prevented by any cause from going in said Steamer, the Shipowner is not to be under any liability if he forward them by succeeding Steamers, whether of this Line, or any steamer running in connection therewith.

8. Also, that the only condition on which Glass, Earthenware, or China will be carried is, that the Carrier shall not be held liable for any loss or injury which may occur whether from negligence or any other cause whatever.

9. Also that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

10. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the Shipper.

11. Also, that this Bill of Lading, duly endorsed, be given up to the Ship's Consignee in Exchange for Delivery Order.

12. Also, that Freight Prepaid will not be returned, Goods lost or not lost.

13. Also, that parcels for different Consignees collected or made up in single packages addressed to one Consignee pay full freight on each parcel.

The liability of the carrier, under this bill of lading, shall be governed by the law of England, with reference to which law this contract is made.

And finally, in accepting this Bill of Lading, the Shipper, Owner, and Consignee of the goods, and the holder of the Bill of Lading agree to be bound by all its stipulations, exceptions and conditions, whether written or printed, as fully

as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said ship hath affirmed to 3 bills of lading, all of this tenor and date, numbered consecutively, one of which being accomplished and given up to the Carrier, the others to stand void.

Dated in Liverpool, this 21st. day of May 1895.

(Signed.) W. H. CHISHOLM.

ON MARGIN:

F 180/189 10 Bales
B DUNDEE
Through rate from
Charges . . . . . £20

Tons Cwt. Qrs. Lbs.
Freight on at per ton £
Freight on Ft. In. at per ton £
Primage per cent.
Total . . . . . £ Stg.

As per Agreement.

ON MARGIN:

The attention of Shippers is specially directed to the following extracts from the Merchant Shipping Act, 1873.

Section 23. If any person sends, or attempts to send by, or attempts to carry in any vessel any dangerous goods, *i. e.*, aquafortis, vitriol, naptha, benzine, gunpowder, lucifer matches, nitro glycerine, petroleum, or any other goods of a dangerous nature without distinctly marking their nature on the outside of the package, and giving written notice of the nature of the goods at or before the time of sending the same to be shipped or taking the same on board, he shall for every such offence incur a penalty not exceeding £100. Section 24. If any person knowingly sends, or attempts to send by, or carries or attempts to carry in any

vessel any dangerous goods, or goods of a dangerous nature, under a false description, or falslely describes the sender or carrier thereof, he shall incur a penalty not exceeding £500. By the 26th. Section the Master or Owner is empowered to throw dangerous goods overboard. By the 27th. Section such goods may be forfeited. Cargo likely to take fire, or cause damage to other goods, will therefore not knowingly be received, and Shippers of such will be liable for all consequences, and will also be prosecuted as the law directs.

---

Depositions taken in behalf of the libellant at the offices of Messrs. Lewis & Cheyney, Rooms 348-349 Bourse Building, Philadelphia, on Tuesday, November 26, 1895, at three o'clock P. M.

Present—HORACE L. CHEYNEY, Esq., for libellant.
J. RODMAN PAUL, Esq., for Respondent.

(Mr. Cheyney gives notice that he will file an amendment to the libel, changing the claim of damage to twenty bales o burlap instead of ten bales; the damage to the twenty bales of burlap being the amount set forth in the libel, ($2,084.15.)

LODGE COLTON being duly sworn according to law, was examined as follows:

By Mr. CHEYNEY:

*Q.* Captain, what is your business?

*A.* I am surveyor of the Insurance Company of North America.

*Q.* How long have you been in the Insurance Company of North America?

*A.* Four years.

*Q.* What was your occupation prior to that time?

*A.* Master mariner.

*Q.* How long did you serve as master mariner?

*A.* Twenty-five or thirty years.

*Q.* What are your duties as surveyor of the Insurance Company of North America?

*A.* To examine vessels and damaged goods.

*Q.* Do you remember making an examination of certain goods which arrived by the steamship "Indiana" from Liverpool June 7th last?

*A.* Yes, sir.

*Q.* Do you remember examining the twenty bales of burlap consigned to the Farr & Bailey Manufacturing Company?

*A.* Yes, sir.

*Q.* Where did you see those goods?

*A.* On the wharf.

*Q.* With whom did you go there?

*A.* With Mr. Farr.

*Q.* Mr. Farr is of the Farr & Bailey Manufacturing Company?

*A.* Yes, sir.

*Q.* Did you see any one there connected with the steamship?

*A.* No one but the clerks on the wharf.

*Q.* What was the condition of the twenty bales of burlap which I have mentioned?

*A.* They were all very badly damaged with water and dirt. Some of them so much that they had swollen and broken the bands.

*Q.* Is that a part of your duty as surveyor of the Insurance Company of North America to make any appraisement of the amount of damage to the goods?

*A.* I do at times.

*Q.* Did you upon this shipment?

*A.* No, sir; I requested Mr. Farr to do the best he could to save it and do the best he could for all parties concerned.

*Q.* Do you know where these goods were stowed, these twenty bales of burlap?

*A.* I understood they were stowed in No. 3 lower between decks.

*Q.* Did you make any examination of that hold?

*A.* I did.

*Q.* When?

*A.* At the same time I examined the goods on the wharf.

*Q.* Were there any goods at that time in the hold?

*A.* Yes, sir; at the time there was a little cargo on the bottom of the boat.

*Q.* Did you notice anything defective at that time about the condition of that hold?

*A.* I noticed that they had been cleaning around there on the upper portion of the deck and I also noticed that they had one new dead light—one new guard on the forward dead light.

*Q.* What is there over the No. 3 between decks?

*A.* The washing room and water closet for steerage passengers.

*Q.* Do you remember how many dead lights there were in that hold?

*A.* Four; two on each side.

*Q.* Did you have any conversation with any of the officers of the International Navigation Company with regard to the twenty bales of burlap?

(Objected to by Mr. Paul as irrelevant.)

*A.* I think I spoke to Mr. H. C. Bye about them being damaged. I met him on the street and I spoke to him about them. I requested him to look at it. I don't recollect about speaking to Mr. Wallace, the wharf superintendent.

CROSS EXAMINATION.

By MR. PAUL:

× *Q.* How high are these dead lights that you speak of? I mean from the floor of the hold up?

*A.* Well, I should say, Mr. Paul, without knowing exactly, I should say they were close on to six feet. I didn't measure the distance.

× *Q.* Did you take any observation of those lights from the outside?

*A.* I noticed they were glass and the glass at the time I was there was closed up.

×*Q.* And in one of these you noticed what?

*A.* I noticed a new guard on the forward port side.

×*Q.* What is the guard?

*A.* It is a cover on the inside to keep the goods from coming against the glass and breaking it.

×*Q.* That sometimes happens in cargoes? If guards are not placed there the cargoes will break them?

*A.* Yes, sir.

×*Q.* And so that water will not come in?

*A.* Yes, sir.

×*Q.* Do you think that was probably the cause of the damage in this case?

*A.* Oh, I couldn't say.

×*Q.* What do you think was the cause?

*A.* I couldn't say, because the guard was there when I examined her.

×*Q.* And if the guard had not been there, it would have happened in that way?

*A.* I am sure that they had a guard, because the place for a guard was there.

×*Q.* Do you remember which one of those ports had this new guard?

*A.* The forward one on the port side.

×*Q.* Did you notice sufficiently of the vessel or these ports, to say how high above the ordinary sea level they would be from the outside when loaded?

*A.* I didn't examine her outside closely. I couldn't tell that.

×*Q.* You couldn't tell that?

*A.* No, sir; but I am pretty sure that they wouldn't be so high that the sea would swash up over them.

×*Q.* Your only knowledge of this burlap is because Mr. Farr pointed it out to you?

*A.* I examined the burlap.

×*Q.* Your only knowledge that this was the burlap consigned to Mr. Farr was that he pointed it out to you on the wharf as his consignment?

*A.* I had the marks of them. I was sent down to examine them and the clerk on the wharf showed me where it was, the goods.

By Mr. Cheyney:

×*Q.* Is that clerk in the employ of the International Navigation Company?

*A.* Yes, sir.

(Mr. Cheyney offers in evidence letter dated June 12, 1895, and July 8, 1895, marked "W. H. S. Jr., November 26, 1895," copies of which are hereto attached.)

By Mr. Paul:

×*Q.* Have you any idea of the time they had been wet?

*A.* I don't know the time, but it certainly must have been not less than four or five days, because I think it would take that long to heat the way they were. They were very hot inside. They were that warm that they were mildew from the excessive heat.

×*Q.* Do you know how long before you saw them, they arrived there?

*A.* I think the ship had been, I am not positive about that, but I think the ship had been in two or three days.

(Signature waived.)

**Copies of Letters Offered in Evidence and Marked "W. H. S. Jr., November 26th. 1895."**

AMERICAN LINE. RED STAR LINE.

Cable Address
Internavco.

SAMUEL BETTLE
*General Freight Agent.*
H. C. BYE,
*West Bound Freight Agent.*

INTERNATIONAL NAVIGATION COMPANY.
305 and 307 Walnut Street.

Philadelphia, June 12th. 1895.

MESSRS. FARR & BAILEY MFG. CO.
Camden, N. J.

DEAR SIRS:

Referring to your shipment of 20 bales of Burlaps by S.S. "Indiana" damaged by Water.

We have investigated the cause of this damage as thoroughly as possible, and fail to find that the trouble was due to any carelessness or neglect on the part of the ship, and as the damage was caused by salt water, the underwriters, in our opinion, are liable for the loss.

The Surveyors have not yet filed their report, and we do not know their opinion on the matter yet we would suggest however that you request your underwriters to send some to examine the goods and advise you as to disposition of same. The goods should be disposed of to the very best advantage, possible, and the question of liability can be determined afterwards.

Yours truly,

(S'g'd) H. C. BYE,
*West Bound Freight Agent.*

Philadelphia, July 8th. 1895.

MESSRS. FARR & BAILEY MFG. CO.
Camden, N. J.

DEAR SIRS :—

We have to acknowledge receipt of your favor of 5th. inst. enclosing claim amounting to $2164.00, against S.S. "Indiana" arrived June 6th., for damage by water to shipment of Burlap.

The Surveyors' Report on the cargo of this vessel shows that the water had entered through a dead light side port during the voyage. We do not consider that the vessel is liable for this damage and must therefore refer you to your underwriters for settlement of your claim.

Yours truly,

(S'gd) H. C. BYE,
*West Bound Freight Agent.*

---

Testimony taken in behalf of libellant at 348 Bourse Building, December 12, 1895, at 2.30 P. M.

Present—HORACE L. CHEYNEY, Esq., for libellant.
J. RODMAN PAUL, Esq., for respondent.

S. H. JOHNSON, being duly sworn according to law, says :

By MR. CHEYNEY :

*Q.* What is your business?

*A.* I am custodian of the records of the Custom House?

*Q.* You have been subpœnaed to produce bill of lading for ten bales of burlaps shipped from Liverpool about May 21, 1895, on the steamship "Indiana" and marked "G. X. 2304 to 2313." Please state whether you have produced it.

*A.* I have produced it. This is the bill of lading which is filed in the Custom House.

222233



(The bill of lading produced after being compared by Messrs. Paul and Cheyney is found to be in all respects identical to the one heretofore offered in evidence, except the marks upon the margin were "G. X. 2304/313" instead of "F. B. 180/189." The invoice accompanying the bill of lading shows the value of the property to be 308 pounds 14 shillings and 6 pence.)

---

Depositions taken on behalf of the libellant, at the offices of Messrs. Lewis & Cheyney, Rooms, 348-349 Bourse Building, Philadelphia, on Friday, October, 8, 1897, at 3 o'clock P. M.

Present—HORACE L. CHEYNEY, ESQ., for libellant.
J. RODMAN PAUL, ESQ., for respondent.

LODGE COLTON, being recalled, was examined as follows:

By MR. CHEYNEY:

*Q.* You have already been sworn as a witness in this case, I believe?

*A.* Yes, sir; some time ago.

*Q.* What is your occupation at the present time?

*A.* The same position, Insurance Company of North America.

*Q.* You are the surveyor of the Insurance Company of North America?

*A.* Yes, sir.

*Q.* How long have you been with them?

*A.* I have been with them since April, 1892.

*Q.* You went to sea prior to that time?

*A.* Yes, sir.

*Q.* How many years were you at sea?

*A.* 43 or 45 years, somewheres about that.

*Q.* In what capacity did you go to sea?

*A.* The last was master of a vessel.

*Q.* Have you served in all capacities at sea?

*A.* All of them, I went as boy first.

*Q.* Have you served on steam and sailing vessels?

*A.* Yes, sir.

*Q.* What vessels have you been master of, steam vessels?

*A.* My last one was the steamship "Cienfuegos."

*Q.* What other steam vessels?

*A.* The one before was the "Santiago," the other before that was the "Niagara" and the one before was the "C. W. Lord," I commanded quite a number of steamers.

*Q.* I believe you were commodore of the Ward Line at one time?

*A.* Yes, sir.

*Q.* In your experience as a seaman or during your life as a seaman and surveyor of the Insurance Company of North America have you or not frequently had an occasion to examine dead lights of vessels?

*A.* Yes, sir; I have made them quite often.

*Q.* And you are familiar with their construction are you not?

*A.* Yes, sir.

*Q.* It has been testified to in this case by the officer of the steamship "Indiana" that prior to the departure of that vessel from Liverpool, that he, together with the carpenter, I believe, went into the hold where the cargo was stowed and screwed down the various dead lights. It is admitted that some time during the voyage one of the dead lights in that hold became open. Please state in your experience what could cause that dead light to get open during the voyage, assuming that it had been properly secured as testified to by the third officer before the departure from Liverpool?

(Objected to by Mr. Paul because all the facts are not sufficiently stated.)

*A.* I cannot imagine, Mr. Cheyney, if the dead light was securely screwed down, without somebody went down and and opened it, or from defects, that it would come open.

22234

25



*Q.* The only means by which you think it could be opened was some person opening it or a defect in its construction?

*A.* I don't think it could possibly come open if everything was screwed. I don't see how it could possibly come open without it received a blow from the outside which the broken glass would show.

*Q.* Have you in your experience at sea or as a surveyor, ever known a dead light to come open from the force of the water outside?

*A.* I never have, no, sir.

*Q.* In your opinion, could a dead light properly screwed and in good condition, become open by a blow from the outside without breaking the glass?

*A.* I don't think it could, sir.

*Q.* I think you went down to see the steamship "Indiana" shortly after this cargo arrived, did you not?

*A.* I was down aboard of her, yes, sir. After it was reported to us that she had damage, I went down to look at the ship and at that time all of the cargo had deen discharged and they were taking in an outward freight.

*Q.* Did you examine the port dead lights?

*A.* I looked at them. They were screwed up, but they had all been overhauled before that, so I had been informed, and they looked all right at that time,

*Q.* Who informed you that they had been overhauled? (Objected by Mr. Paul.)

*A.* The Carpenter.

By MR. PAUL:

*Q.* You mean ship's carpenter?

*A.* I judge he was the ship's carpenter, Mr. Paul.

By MR. CHEYNEY:

*Q.* Did you see any evidence of any protection made to any of the dead lights?

*A.* Oh, yes, they had inside what we call a protection to

the dead light, a blind light. There was a new blind light here on one port.

*Q.* That is constructed of iron, isn't it?

*A.* Yes, sir, what they call a blind light, and it also showed evidence underneath the dead light where a little water had run down from something or other.

(Objected to by Mr. Paul.)

*Q.* In your examination of the hold of that vessel in which this cargo was loaded, did you see any other source from which water could have leaked into the hold?

*A.* Well, she has a tank, I think she has fresh water just forward of that bulkhead and on the starboard side there is a wash room over it on the forward part and it would have to be a very large quanitity of water to leak from that because they would see it and if this washroom was on other side I should think they could see it if the pipe would break.

CROSS EXAMINATION.

By MR. PAUL:

×*Q.* Which dead light did you say had been overhauled?

*A.* One of the port lights, the forward dead light.

×*Q.* What compartment?

*A.* No. 3 orlop deck, in that compartment.

×*Q* The port side forward?

*A.* Yes, sir.

×*Q.* You don't know, of course, of your own knowledge, through which port light it is supposed this water came?

*A.* No, sir.

By MR. CHEYNEY:

×*Q.* The hold you refer to was the one in which this cargo was stowed?

*A.* The one in which this cargo was damaged, because I was requested to go down and look in regards to it, and

22255



Captain Wallace, and also there was a man by the name of Walsh was there, I think he is an engineer on the line.

×*Q.* Captain, I wish you would look at this dead light which I will put a tag on and mark in some way and state whether this is similiar in construction to the dead lights the "Indiana" had according to your recollection?

*A.* No, Mr. Cheyney, I think the dead light on the "Indiana" was a little smaller and the blind came up this way (indicating.)

(Mr. Paul states that the exact model can be produced.)

(Signature waived)

6. That by the said Bill of Lading it is provided that the carrier shall not be liable for loss or damage occasioned by perils of the sea, and the said damage was due to a peril of the sea.

7. That by the said Bill of Lading it was further provided that the carrier shall not be liable for loss occasioned by accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment by the pilot, master mariners or other servant of the ship owner not resulting however in any case from want of due diligence by the owners of the ship or by unseaworthiness of the ship at the commencement or any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness, and that the said loss or damage, if any, was occasioned by an accident of navigation or management of the steamship and not by want of due diligence on the part of the owners or by unseaworthiness and all reasonable means have been taken by said owners to provide against unseaworthiness. Wherefore, by reasons of the said proviso and by reason also of the Act of Congress in such case made and provided, the respondent is not liable.

8. It is further provided by the said Bill of Lading that the liability of the carrier thereunder should be governed by the law of England with reference to which the contract was made; that the said contract or Bill of Lading was made and entered into in England, and by the law of England the said steamship and her owners are not liable for the loss and damage aforesaid.

All and singular the premises are true.

Wherefore, the respondent prays that the Court pronounce against the Libel aforesaid and condemn the libellant in costs and otherwise right and justice administer in the premises.

INTERNATIONAL NAVIGATION CO.

By GEO. H. HIGBEE, Manager.

*Eastern District of Pennsylvania, ss.*

George H. Higbee, the manager of the respondent company, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer are true to the best of his knowledge, information and belief.

{SEAL} GEO. H. HIGBEE.

Sworn and subscribed before me this 31st day of July, 1896.

ARCHER McLEARN, Notary Public.

---

# DEPOSITIONS.

---

## COMMISSION TO ENGLAND.

---

INTERROGATORIES TO BE ANSWERED BY JOHN MILLER, OF LIVERPOOL, A WITNESS ON BEHALF OF THE RESPONDENT.

---

JOHN MILLER of lawful age being produced, sworn and examined on the part of the Respondents, deposeth and saith :—

1. Do you know the Libellant and the Respondent or either of them in this case? If so, how long have you known them?

*To the first interrogatory* he saith :—I do not know the Libellant but I do know the Respondent. I have known the Respondent International Navigation Company for over twelve years.

2. What is your age, residence and present occupation?

*To the second interrogatory* he saith:—My age is about 46 years. My residence is at 16 North Dingle Kirkdale in the County of Lancaster, but I am at present an inmate of the Royal Infirmary in the City of Liverpool. I am by occupation a ship carpenter. While I am in the Infirmary I am of course without occupation.

3. Have you followed the sea, and if so, for how long? and in what capacity?

*To the third interrogatory* he saith:—I have been at sea for about twenty-three years and all the time as a ship's carpenter.

4. Were you carpenter on board the steamship "Indiana," in June, 1895? and on the voyage from Liverpool to Philadelphia, leaving Liverpool, May 22nd, 1895.

*To the fourth interrogatory* he saith:—I was carpenter on board the S. S. "Indiana," in June, 1895, and was so on the voyage from Liverpool to Philadelphia, leaving Liverpool, May 22nd, 1895.

5. What is your duty as carpenter with reference to the inspection of the ports or deadlights and the various holds of the steamship before leaving port? and if you answer that it is your duty to inspect the ports and deadlights in the various holds, please answer fully whether or not you inspected the same on board the steamship "Indiana" prior to the voyage in question.

*To the fifth interrogatory* he saith:—My duty as carpenter with reference to the inspection of the ports or deadlights of the various holds of the steamship before leaving port was as soon as the inward cargo was discharged to see that the scuppers were cleaned and all the port lights and dummy covers, fastening nuts and bolts of the ports were in order and to make them perfectly tight. It was my duty to inspect each one of the ports in every hold all round the ship. I had also to see that all the ports

were securely closed before the cargo was taken in and the vessel sailed. I made such inspection of the ports or deadlights in the steamship "Indiana" prior to the voyage in question.

6. State especially whether you inspected No. 3 lower steerage; that is, that third hold from the bottom, and second below the main deck of the steamship "Indiana," and if so, exactly when and how you examined the deadlights or ports of this hold, especially those on the starboard side; state specifically what you found to be the condition as to the fastenings, screws, bolts, iron covers, and other parts of the ports. Whether or not any of them were opened between the time you inspected them and the time of sailing? What was the time of sailing?

*To the sixth interrogatory* he saith:—I inspected No. 3 lower steerage, that is, the third hold from the bottom and the second below the main deck of the steamship "Indiana" on the day before the vessel sailed and before any cargo was taken into the lower steerage. I personally examined each port light and dummy and the nuts, bolts and screws fixing the same, and tried them to see that they were in proper order. The Marine Superintendent, Captain Collins, was present. I did this with those on the starboard side, examining the ports first on one side of the ship and then on the other. I found the fastenings, screws, bolts, lights and iron covers and all the other parts of the ports in perfect order and condition. I saw the ports securely closed and screwed up and the dummies or covers screwed down over them. This was on the afternoon of the day before the vessel sailed, and so far as I know none of the ports were opened between the time. I inspected them and the time of sailing. The carpenters in the shore gang who were down in the hold last and put on the hatches reported to me in the regular

course, and they said the ports were closed and all secure when they closed the compartment. I was down there when cargo was coming in and they were then closed as I had left them. It would have been against the rules of the service for any one to open the ports after I had closed them. and so far as I know they were not opened. We sailed about three o'clock in the afternoon of the 22d May, 1895.

7. How high was the cargo stowed in the hold in question when you sailed from Liverpool? Were the ports covered by it or not, and could or could not one pass over it readily from the hatch to the port?

*To the seventh interrogatory* he saith:—There was only one ground tier of cargo in the hold in question. It went right across from side to side of the ship and it was chocked off. The ports were not covered by it and any one could pass over it readily from the hatch to the port.

8. When did you next see that hold, and what led you to go into it? What did you find there; if you passed from the hatch to the port, was there any difficulty in so doing? What did you do with reference to the port? If you shut it, was there any time or difficulty in so doing? What was the condition of the screws and bolts at that time?

*To the eighth interrogatory* he saith:—I next saw that hold to the best of my recollection about six or seven days after leaving Liverpool. It was part of my regular duty to take soundings each day of each compartment of the vessel, and on the fourth or fifth day I had found by sounding that there was a quantity of water in No. 3 hold and also in numbers 1 and 2 holds. I immediately reported the matter to the Captain and Chief Engineer and the water was pumped out, but the second day afterwards the Chief Engineer came to me about 7.30 a. m., when I was serving out water to the passengers, and said

he was afraid that there was a leak in No. 3 orlop and asked me whether I had any suspicion of it. I said no, the ship was all right when she left Liverpool. He said he was going down to examine the place, and I went and reported to the Captain along with the Chief Engineer, and the Captain instructed me to give the Chief Engineer every assistance. When we got the cover off the hatch a deck hand who was assisting in doing so said: "I can see daylight down there." I said, "Throw the hatch off," and I jumped down into the hold and found the after port on the starboard side wide open and the sea coming in the full bore of the opening and washing clean across the ship when she rolled. There was no difficulty in passing from the hatch to the port. I shut and screwed up the port at once and screwed down the cover. I did it at once and there was no time or difficulty in doing so. The screws and bolts had been unscrewed so as to allow the port and cover to be opened, but there was no difficulty in screwing them back again and the port and dummy cover were both closed and safely secured.

9. Were any repairs necessary to the port in question, its fastenings or cover at that time, or upon arrival in Philadelphia.

*To the ninth interrogatory* he saith:—No repairs were necessary to the port in question, its fastenings or cover, either at that time or upon the ship's arrival at Philadelphia.

10. Do you know of cargo being damaged upon that voyage, and if so, do you know by what it was caused.

*To the tenth interrogatory* he saith:—The cargo in that compartment was damaged by water coming through the port. I know of no other damaged cargo in this ship.

11. What was the distance below the deck above of the port in question; what was the distance of the port from the deck below; what was the distance of the port

above the ordinary load water line; was the port open at the time of leaving Liverpool? If you answer it was not, give your reason for so answering.

*To the eleventh interrogatory* he saith:—The port in question was about 3 feet below the deck above and about 4 feet 6 inches above the deck below. I cannot say what would be the distance of the port above the ordinary load water line as I never checked it. The port was not open at the time of leaving Liverpool. I say it was not because I went round the compartment on the afternoon previous to our sailing at the time the cargo was coming in and it was then closed. I was not in the compartment again before the ship sailed but the two shore carpenters, John Lloyd and Tom Kelly, were there and they battened down the hatch and reported to me that the ports and everything were secured below.

12. If you know any other matter or thing, favorable to the Respondent, please state it, without being specifically interrogated thereto.

*To the twelfth interrogatory* he saith:—I have nothing to add.

---

CROSS-INTERROGATORIES ON BEHALF OF LIBELLANT, TO JOHN MILLER, A WITNESS TO BE EXAMINED UNDER RESPONDENT'S COMMISSION TO LIVERPOOL, ENGLAND.

1. If you answer to the eighth interrogatory that you found one of the ports open, state fully if within your knowledge.

*In answer to the first cross-interrogatory* he saith:—It must have been opened by some person, but I cannot say by whom.

2. State whether any repairs to this port or deadlight or the cover were made upon the arrival of the vessel at Philadelphia or thereafter.

*In answer to the second cross-interrogatory* he saith:—No repairs were done to this port or deadlight or the cover either upon the arrival of the vessel at Philadelphia, nor so far as I am aware have any been done since. None were done while I was by the ship and I remained in her to the close of the year.

(Signed) JOHN MILLER.

---

## SUPPLEMENTAL COMMISSION TO ENGLAND.

---

INTERROGATORIES TO BE ANSWERED BY JOSEPH LEACH, RICHARD DONBAVAND AND THOMAS KELLY, WITNESSES ON BEHALF OF THE RESPONDENT.

JOSEPH LEACH of 51 Somerville Road, Waterloo, in the County of Lancaster, foreman stevedore, aged 65 years and upwards, being duly sworn and examined on the part of the Defendant, doth depose and say as follows:

1. Do you know the Libellant and Respondent or either of them in this case? If so, how long have you known them?

*To the first interrogatory* he says:—I do not know the Libellants but I do know the Respondents. I have nown them for about twenty years.

2. What is your age, residence and present occupation?

*To the second interrogatory* he says:—My age is 65 years, my residence is at 51 Somerville Road, Waterloo, in the County of Lancaster, and my present occupation that of a foreman stevedore.

3. Where were you employed on May 22nd, 1895 and did your occupation cause you to be on board the steamship "Indiana" prior to leaving Liverpool on May 22nd, 1895?

*To the third interrogatory* he says:—I am in the permanent employ of Messieurs Mack & Durant of Liverpool, master stevedores, and was in their employ on the 22nd May, 1895. Having been working late the previous night, I was not working on that day. My occupation did cause me to be on board the S. S. "Indiana" prior to her leaving Liverpool on the 22nd May, 1895, viz: On the 21st May when I was on board her throughout the day and until late at night superintending the stowage of the cargo. I superintended the stowage of the cargo on the No. 3 lower steerage, and I finally left the vessel about 11 p. m. of the 21st May.

4. Were you on May 22nd in any of the holds of the steamship "Indiana," especially No. 3 lower steerage; that is, the third hold from the bottom and the second below the main deck of the steamship; and if so, when were you last there prior to the sailing of the steamship on the voyage in question?

*To the fourth interrogatory* he says: I was not in any of the holds of the S. S. "Indiana" on the 22nd May, 1895.

5. If you were in No. 3 lower steerage at the date in question, state whether you observed the deadlight ports of this hold, especially those on the starboard side; whether the same were closed or open, and what was the condition of the fastenings, screws, nuts, bolts, iron covers and other parts of said ports. Was the after deadlight port starboard side of said hold open or shut, and what was its condition?

*To the fifth interrogatory* he says:—I have already stated that I was not in No. 3 lower steerage on the 22nd May, 1895.

6. How high was the cargo stowed in the hold in question on that voyage; were the ports covered by it or not, and could or could not one pass over it reaching from the hatch to the port? How long after you last saw the hold in question did the vessel sail and how long after you left the hold were its hatches battened down?

*To the sixth interrogatory* he says:—When I was last in the No. 3 lower steerage on the 21st May, 1895, there was one tier of cargo lying on dunnage on the deck extending from side to side of the ship. There was only the one tier of cargo in that hold and it did not reach or cover the ports. Anyone could pass readily over it from the hatch to the port. I was last in the hold in question about 11 p. m. of the 21st May, and the vessel left the dock I believe about 8 a. m. of the 22nd May and sailed from the port in the afternoon. I cannot say how long it was after I left the hold that the hatches were battened down.

7. If you know any other matter or thing favorable to the Respondent, please state it, without being specifically interrogated thereto.

*To the seventh interrogatory* he says:—When I was in No. 3 lower steerage on the 21st May, I noticed the ports or deadlights of the hold, including those on the starboard side. The ports were closed and the dummies fastened down and screwed tight. The after deadlight port on the starboard side was properly closed and fastened. I am confident of this from my own personal observation. It is a rule of the service that the deadlights and dummies are closed by the ship's carpenter before the vessel begins to take cargo in, and after they have been closed they are not opened again under any circumstances. At the same time it is my regular duty to see that the ports have been closed so as to be quite certain that nothing is wrong.

CROSS-INTERROGATORIES.

1. If in answer to the fifth interrogatory you say that you observed the after deadlight port on the starboard side of No. 3 lower steerage, and if you describe its condition then state whether you observed all the other ports of said hold. If you answer that you did, describe the condition of each fully. State whether there was anything in the condition of the after port which caused your attention to be directed to it.

*To the first cross-interrogatory* he says:—I observed all the ports in the No. 3 lower steerage. As foreman stevedore it was my duty to be in the compartment while cargo was coming in, and as part of my regular duty I noticed the condition of the various ports, and I am positive that they were closed. There was nothing to draw my attention to the after port on the starboard side more than any other.

2. When was your attention first called to the condition of the after port of No. 3 lower steerage, starboard side, upon her departure from Liverpool on May 23rd, 1895, and by whom?

*To the second cross-interrogatory* he says:—No one called my attention to the condition of the after part of the No. 3 lower steerage on the starboard side upon the departure of the vessel from Liverpool. I looked at it in the same way as I did the other ports.

3. Were you in No. 3 lower steerage of the steamship "Indiana" before she sailed on the next following voyage for Liverpool. If you answer that you were, state whether the after port starboard side had been repaired in any way since the voyage of May 23rd, 1895.

*To the third cross-interrogatory* he says:—I was not in No. 3 lower steerage of the "Indiana" before she sailed on the next following voyage for Liverpool, but I was there before she sailed on the next following voyage from Liverpool. The after port on the starboard side had not in any way been repaired since the voyage of May 23rd, 1895.

4. If you have been in No. 3 lower steerage of the steamship "Indiana" prior to her sailing on any voyage since May 23rd, 1895, state fully the condition of the after port on the starboard side prior to her departure.

*To the fourth cross-interrogatory* he says:—I have been in the No. 3 lower steerage of the steamship "Indiana" prior to her sailing on several voyages since May 23rd, 1895. The after port on the starboard side of the No. 3 lower steerage has always been closed and screwed up in the same way as it was on the voyage in question.

5. If in answer to the fifth interrogatory you say that the after deadlight port on the starboard side was closed, state whether the iron port cover was also closed.

*To the fifth cross-interrogatory* he says:—the iron port cover was also closed.

6. State fully what cargo was in No. 3 lower steerage of the "Indiana" on her voyage from Liverpool, on May 23rd, 1895.

*To the sixth cross-interrogatory* he says:—There were Dundee canvas bales, boxes of tin, cases of machinery, and some transit goods, but I do not know their nature.

---

Richard Donbavand of 33 Virginia Street, Bootle, in the County of Lancaster, hatch foreman stevedore, being duly sworn and examined on the part of the Defendants, doth depose and say as follows:—

1. Do you know the Libellant and Respondent or either of them in this case? If so, how long have you known them?

*To the first interrogatory* he says:—I do not know the Libellants but I do know the Respondents and have known them for about twenty years.

2. What is your age, residence and present occupation?

*To the second interrogatory* he says:—My age is 52 years. My residence 33 Virginia Street, Bootle, in the County of Lancaster, and my occupation that of head foreman stevedore for Messieurs Mack and Durant of Liverpool, master stevedores.

3. Where were you employed on May 22nd, 1895, and did your occupation cause you to be on board the steamship "Indiana" prior to leaving Liverpool on May 22nd, 1895?

*To the third interrogatory* he says:—I was employed on the 22nd May, 1895, on board the S. S. "Indiana" until we had finished the stowage of the cargo about 4 a. m. She left the dock to go into the river about 8 a. m., and left the port the same afternoon.

4. Were you on May 22nd in any of the holds of the steamship "Indiana," especially No. 3 lower steerage; that is, the third hold from the bottom and the second below the main deck of the steamship; and if so, when were you last there prior to the sailing of the steamship on the voyage in question?

*To the fourth interrogatory* he says:—I was through all the holds of the steamship "Indiana" on the 22nd May, and especially through the No. 3 lower steerage. I was last in the No. 3 lower steerage about 1.45 a. m. of the 22nd May.

5. If you were in No. 3 lower steerage at the date in question, state whether you observed the deadlight ports of this hold, especially those on the starboard side;

whether the same were closed or open, and what was the condition of the fastenings, screws, nuts, bolts, iron covers and other parts of said ports. Was the after deadlight port starboard side of said hold open or shut, and what was it's condition?

*To the fifth interrogatory* he says:—I observed the deadlight ports of the No. 3 lower steerage, including those on the starboard side. They were all closed and screwed up with the dummy covers down and screwed tight. The after dead light port on the starboard side of the said hold was shut and closed in the regular way.

6. How high was the cargo stowed in the hold in question on that voyage; were the ports covered by it or not, and could or could not one pass over it reaching from the hatch to the port? How long after you last saw the hold in question did the vessel sail, and how long after you left the hold were the hatches battened down?

*To the sixth interrogatory* he says:—In the No. 3 lower steerage there was only one tier of cargo lying upon the deck. It would be about 1 foot 9 inches in heighth on top of the dunnage. The ports were not covered by it and would be about 3 feet above it, and anyone could pass readily over the cargo from the hatch to the port. I left the No. 3 lower steerage about 1.45 a. m., and the vessel left the dock to go into the river at 8 a. m., and she sailed the same day. As soon as we had finished the work in the No. 3 compartment we put the hatches on, but in the ordinary course they would not be battened down until the shore carpenter came down at 6 o'clock in the morning.

7. If you know any other matter or thing favorable to the Respondent, please state it without being specifically interrogated thereto.

*To the seventh interrogatory* he says:—It is a regular rule in the service before any cargo goes into any com-

partment, for the dead lights to be examined by the foreman in charge and to see that they are properly secured and made tight. If by any chance anything is found that wants attention, one of the officers or engineers is called down to personally see that it is properly secured. Nothing was found wrong in No. 3 lower steerage.

---

CROSS-INTERROGATORIES.

1. If in the answer to the fifth interrogatory, you say that you observed the after deadlight port on the starboard side of No. 3 lower steerage, and if you describe its condition, then state whether you observed all the other ports of said hold. If you answer that you did, describe the condition of each fully. State whether there was anything in the condition of the after port which caused your attention to be directed to it.

*To the first cross-interrogatory* he says:—I observed all the port lights in the No. 3 lower steerage. They were all closed and the dummy covers properly secured. I noticed nothing particular in the condition of the after port to cause my attention to be directed to it. I examined all the ports in the same way.

2. When was your attention first called to the condition of the after port of No. 3 lower steerage, starboard side, upon her departure from Liverpool, on May 23rd, 1895, and by whom?

*To the second cross-interrogatory* he says:—My attention was not drawn by anyone to the condition of the after port referred to. I examined all the ports in the No. 3 lower steerage, and this amongst the others, as part of my duty.

3. Were you in No. 3 lower steerage of the steamship "Indiana" before she sailed on the next following voyage for Liverpool? If you answer that you were, state whether the after port, starboard side, had been repaired in any way since the voyage of May 23rd, 1895.

*To the third cross-interrogatory* he says:—I was not in the No. 3 lower steerage of the steamship "Indiana" before she sailed on the next following voyage for Liverpool, but I was there before she sailed on the next following voyage from Liverpool.

The after port on the starboard side had not been in any way repaired since the voyage of May 22nd, 1895.

4. If you have been in No. 3 lower steerage of the steamship "Indiana" prior to her sailing on any voyage since May 23rd, 1895, state fully the condition of the after port on the starboard side prior to her departure.

*To the fourth cross-interrogatory* he says:—I have been in the No. 3 lower steerage of the "Indiana" prior to her sailing on every voyage since May 22nd, 1895. The after port on the starboard side has always been in good condition and properly screwed prior to departure. I never saw anything different in it. The iron dummy or cover was also closed. You could not close the iron dummy or cover without the port light was properly screwed up. The cover would not go close unless the screws had been screwed up tight.

5. If in answer to the fifth interrogatory you say that the after deadlight port on the starboard side was closed, state whether the iron port cover was also closed.

6. State fully what cargo was in No. 3 lower steerage of the "Indiana" on her voyage from Liverpool on May 23rd, 1895.

*To the sixth cross-interrogatory* he says:—It consisted of canvas bales, machinery, boxes of tin and 14 packages of manifest baggage.

22244



THOMAS KELLY of 14 Sedan Street, Toxteth Park, Liverpool, in the County of Lancaster, aged 56 years and upwards, being duly sworn and examined on the parts of the Defendants, doth depose and say as follows:

1. Do you know the Libellant and Respondent or either of them in this case? If so, how long have you known them?

*To the first interrogatory* he says:—I do not know the Libellants but I do know the Respondents, the International Navigation Company. I have known the responent Company for about ten years, during which time I have been in their employ.

2. What is your age, residence and present occupation?

*To the second interrogatory* he says:—My age is 56 years, my residence 14 Sedan Street, Toxteth Park, and my occupation that of a shipwright in the employment of the International Navigation Company at Liverpool.

3. Where were you employed on May 22nd, 1895, and did your occupation cause you to be on board the steamship "Indiana" prior to leaving Liverpool on May 22nd, 1895?

*To the third interrogatory* he says:—I was employed on board the "Indiana" on the 22nd May, 1895, and was on board her prior to her leaving Liverpool on that day.

4. Were you on May 22nd in any of the holds of the steamship "Indiana" especially No. 3 lower steerage; that is, the third hold from the bottom and the second below the main deck of the steamship; and if so, when were you last there prior to the sailing of the steamship on the voyage in question?

*To the fourth interrogatory* he says:—I was in various holds of the steamship "Indiana" but was not in the No. 3 lower steerage. I was in No. 3 upper steerage. I went on board at 6 a. m. I went to batten down the hatches. I battened them down right, fore and aft, in-

cluding that of the No. 3 lower steerage. Before battening down the No. 3 lower steerage hatch we lifted the hatch off and looked down to see what vacant space there was. This is a regular custom, so that we may inform the officers in case further room is required for putting away baggage, etc. I saw that the compartment was not full of cargo. There was only one ground tier upon the deck.

5. If you were in No. 3 lower steerage at the date in question, state whether you observed the deadlight ports of this hold, especially those on the starboard side whether the same were closed or open, and what was the condition of the fastenings, screws, nuts, bolts, iron. covers and other parts of said ports. Was the after deadlight port, starboard side, of said hold open or shut, and what was it's condition?

*To the fifth interrogatory* he says:—I was not in No. 3 lower steerage and did not observe or see the deadlight ports.

6. How high was the cargo stowed in the hold in question on that voyage; were the ports covered by it or not, and could or could not one pass over it reaching from the hatch to the port? How long after you last saw the hold in question did the vessel sail, and how long after you left the hold were the hatches battened down?

*To the sixth interrogatory* he says:—The cargo appeared to be stowed about two feet high. It would not cover the ports and anyone could pass over it readily from the hatch to the port. The vessel was in the dock at the time we battened down the hatch, but left shortly after, but I cannot say exactly the time.

7. If you know any other matter or thing favorable to the respondent, please state it without being specifically interrogated thereto.

*To the seventh interrogatory* he says:—I feel confident that the deadlights were closed when I looked down the hatch into the No. 3 lower steerage. It was dark there. If one of the port lights had been open I should have noticed the light from the ship's side at once. We battened the hatch down after replacing the hatch we lifted.

---

CROSS-INTERROGATORIES.

1. If in the answer to the fifth interrogatory, you say that you observed the after deadlight port on the starboard side of No. 3 lower steerage and if you describe its condition then state whether you observed all the other parts of said hold. If you answer that you did, describe the condition of each fully. State whether there was anything in the condttion of the after port which caused your attention to be directed to it.

*To the first cross-interrogatory* he says:—I did not observe the after deadlight port on the starboard side or any of the ports. It was not part of my duty.

2. When was your attention first called to the condition of the after port of No. 3 lower steerage, starboard side, upon her departure from Liverpool, on May 23rd, 1895, and by whom?

*To the second cross-interrogatory* he says:—My attention was never called to the condition of the after port in the No. 3 lower steerage on the starboard side.

3. Were you in No. 3 lower steerage of the steamship "Indiana" before she sailed on the next following voyage for Liverpool. If you answer that you were, state whether the after port starboard side had been repaired in any way since the voyage of May 23rd, 1895.

*To the third cross-interrogatory* he says:—I cannot say. If I was I could not say whether the after port on the starboard side had been repaired or not. It would not fall within my duties.

4. If you have been in No. 3 lower steerage of the steamship "Indiana" prior to her sailing on any voyage since May 23rd, 1895, state fully the condition of the after port on the starboard side prior to her departure.

*To the fourth cross-interrogatory* he says:—I have never examined the condition of the after port on the starboard side. It does not fall within my duty.

5. If in answer to the fifth interrogatory you say that the after deadlight port on the starboard side was closed, state whether the iron port cover was also closed.

*To the fifth cross-interrogatory* he says:—I am of opinion that the iron port cover was closed as well as the after deadlight port, otherwise there would have been light in the compartment from the ship's side. When I lifted the hatch and looked down I should have noticed it.

6. State fully what cargo was in No. 3 lower steerage of the "Indiana" on her voyage from Liverpool, on May 23rd, 1895.

*To the sixth cross-interrogatory* he says:—I do not know what the cargo of the No. 3 lower steerage consisted of.

MARCH 13, 1896.

Parties met at the office of BIDDLE & WARD, Esqs., No. 505 Chestnut Street, at 12 o'clock M.

Present:

JOHN F. LEWIS, Esq., for Libellants.
J. RODMAN PAUL, Esq., for the Steamship "Indiana."

---

JAMES D. FORBES, being duly sworn according to law deposes and says as follows, on examination:

BY MR. PAUL.

Q. You are the third officer of the steamship "Indiana?"

A. Yes, sir.

Q. What was your position in May last?

A. The same; third officer.

Q. Do you remember the voyage in May, 1895, from Liverpool to Philadelphia, during which some damage was done to some cargo from an open port?

A. Yes, sir,

Q. Whose duty is it to survey the holds before sailing?

A. It is my duty, sir.

Q. Did you perform that duty before leaving Liverpool?

A. Yes, sir; I did.

Q. Did you notice the ports in the various holds?

A. Each and every one of them was examined.

Q. How did you examine them?

A. By feeling the screws with my fingers and otherwise; the carpenter and I used a screw wrench on each of them.

Q. Did you examine the ports in No. 3 orlop hold?

A. Yes, sir, with the others.

Q. Did you examine the after port of that hold on the starboard side?

A. Yes, sir.

Q. What was its condition?

A. Good condition; nothing wrong with it.

Q. Was there anything broken about it?

A. Nothing broken.

Q. Anything out of the way?

A. Nothing that I could see.

Q. When did you see that port—how long before sailing did you see it last?

A. I could see the port up to within an hour or two of finishing loading.

Q. Did you see it, I say?

A. Yes, sir; I did see it.

Q. So you saw it last up to within an hour or two of finishing loading?

A. Yes, sir.

Q. Did you examine it?

A. No, I made no examinations; just looked at it.

Q. When had you made the examination?

A. The forepart of the day.

Q. When did you sail—do you remember?

A. About five o'clock in the morning.

Q. What day was it that you sailed—do you remember the day of the month?

A. No; I cannot remember.

Q. About how many days afterwards was it, as far as you can remember, before you heard anything of this port?

A. I should say six days.

Q. What did you hear then—do you know personally anything about the matter or only what you heard?

A. Only what I heard; the captain was the first to notify me; I was on the bridge then, and the captain notified me of the fact; he almost blamed me for having this thing happen.

Q. What did he tell you?

A. He told me that there was one of those ports open in No. 3 hold orlop deck; I told him that was impossible, for I had examined them thoroughly before leaving; that was the information I had of this.

Q. Did you see the port then?

A. No; I never went down, because my duties kept me on the bridge.

Q. Did you see the port after you got to Philadelphia?

A. Oh, yes; I went down then, when they took the cargo out I went down to have a look.

Q. What was the condition of the port screws?

A. Seemed to be all right.

Q. Do you know whether anything has been done to that port since?

A. No, sir; I have not heard of anything being done to it.

Q. Do you know whether it is in the same condition?

A. The same condition as it was then.

Q. Which is No. 3 hold orlop deck? Describe it so that we know exactly what it is?

A. There is the upper deck, under that is the steerage where passengers live, and under that is the orlop deck.

Q. What is below that?

A. Between decks and lower hold.

Q. So that it is the third story as it were above the bottom of the ship?

A. Yes.

Q. And No. 3 means what?

A. The third hold of the ship from the bow.

Q. Is that forward of the engine room?

A. Forward of the engine room.

Q. How high above the floor or ceiling of the hold are these ports?

A. From the deck to the lower port is seven feet ten inches.

Q. Then you went from the upper edge of the port ceiling to the next deck?

A. I should think about two feet. Two feet three or four inches.

Q. What is the diameter of the port itself?

A. The diameter of the port is nine inches.

Q. How is the port closed—what has it in the way of covers for closing?

A. It has a glass window, also what we call a dummy, a dummy blind goes over the glass.

Q. What is that?

A. It is an iron plate shutting down on top of the glass after the glass is secured in.

Q. The glass is set, of course, in some metal?

A. A brass circle, and that goes on a hinge and opens forward from the side.

Q. And how about the iron clip you spoke of?

A. That hinges above the port and raises up,

Q. When you saw the port in Liverpool was the glass and cover both on or only one?

A. Both on and both secured.

Q. Is Captain Townsend living?

A. He is dead.

Q. What sort of weather did you have during the five or six days out before the Captain told you this?

A. We had different weather.

Q. What is the distance above the water line upon an even keel of the "Indiana" loaded of these ports in the orlop deck No. 3.

A. Well, they are not loaded the same every trip.

Q. Can you give us any idea?

A. On this particular voyage I should think that port must have been from two to four feet above the water.

Q. What would be the effect of the rolling of the ship if that port was open as to water coming in or not?

A. The water would certainly come in if the port was open.

Q. Would it require a very great rolling in rough weather?

A. I should think not.

---

Counsel for Libellants reserves the right to cross-examine the witness when he returns upon his next voyage and calls for the log book of the Indiana.

---

APRIL 17, 1896.

Parties met at the office of BIDDLE & WARD, Esqs., No. 505 Chestnut Street, Philadelphia, at 10.30 o'clock P.M.

Present:

H. L. CHEYNEY, Esq., for Libellant.
J. RODMAN PAUL, Esq., for Steamship "Indiana."

---

JAMES D. FORBES recalled.

BY MR. PAUL.

Q. When you were last examined the hold in which this port hole was, which was stated to be the third from the bottom of the ship was called the orlop deck either by me or by you; is that the usual or universal name for that?

A. As I have been used to calling it.

Q. Is it called by any different names by others?

A. Yes, sir; there is between decks and the orlop deck, and others again the between deck.

Q. To fix the position of that deck you stated too it was the third one from the bottom. Enumerate the decks on the "Indiana?"

A. From the outside deck, that is in the open air, that is the main deck; under that is the steerage where passengers live; under that is what I have been calling between decks, that is where this thing happened; under that is the between decks and the lower hold.

Q. How many altogether?

A. There is the lower hold, and the between decks and orlop, as I call it.

Q. And what is above the orlop?

A. There is the steerage and the main deck.

Q. Do you know whether it is called ever the lower steerage?

A. I never heard any one to call it so, because we had no passengers there; consequently we never had any occasion to call it the lower steerage. It has always been filled with cargo during the time I have been on the ship. If there had been passengers there I should naturally have thought it was the lower steerage.

Q. When you last saw the hold before leaving Liverpool was the cargo below the level of this port or above it?

A. As near as I could judge, because I did not take a great deal of notice how high it was, it was not above the lower part of the port; it may have been a few inches in, but the port was perfectly clear above the surface of the cargo.

BY MR. CHEYNEY.

Q. I understand this deck you call the orlop deck is the first one underneath the steerage?

A. Yes, sir; the first one underneath the steerage.

Q. And it is on the "Indiana" used for carrying cargo entirely?

A. Yes, sir.

Q. How was the "Indiana" coming over that time; was she loaded?

A. No, she was not filled up; she had all she had to put into her.

Q. About what is the heighth of the orlop deck, the space between the orlop deck and the steerage?

A. Between the floor and the ceiling.

Q. Yes, sir?

A. About eight feet.

Q. How far above the flooring was this port hole?

A. From the floor to the lower part of the port, five or six ~~inches~~ feet.

Q. And how wide is the port?

A. Nine inches diameter.

Q. I understand you did not see the port at all from the time you left Liverpool until the time you arrived at Philadelphia?

A. No, sir.

---

Adjourned.

DECEMBER 17TH, 1896.

Testimony taken on behalf of Respondent at the office of Biddle & Ward, 505 Chestnut Street, Philadelphia, at 3.30.

Present:

H. L. CHEYNEY, Esq., for Libellant.
J. RODMAN PAUL, Esq., for Respondent.

---

HENRY L. EBSEN, sworn and examined:

BY MR. PAUL.

Q. What is your position, Mr. Ebsen?

A. Draughtsman of the International Navigation Company.

Q. Please state whether you made any measurements with reference to the deadlight ports or any of them of the steamship "Indiana" recently?

A. Yes. When the ship was here last I made a measurement.

Q. And the port light in the lower steerage No. 3 compartment measured what distance above the water line?

(Objected to by Mr. Cheyney as irrelevant and immaterial.)

Q. Which particular deadlight port were you measuring?

A. The one that I measured was the port on the starboard side in the lower steerage of No. 3 compartment.

Q. How many ports are there in that?

A. I did not count them. I took the after one.

Q. Had you been provided with any data from which to make your measurements, as to draft, etc.?

A. None whatsoever, I took all the data myself.

Q. Well, what did you do?

A. I found out at what draft this port in question would come level with the water. That is, I figured it to be 24 feet 8¼ inches, the draft, and I arrived at that conclusion by noting the draft that the ship had at the time I measured her, and making the necessary corrections for list and trim ship, &c.

Q. Now, assuming that that vessel had a draft of 20 feet and 3 inches forward and 22 feet 3 inches aft, in leaving Liverpool, and that on her arrival at Philadelphia she had a draft of 20 feet 3 inches forward and 20 feet no inches aft, and taking about the mean between those drafts on leaving and on arrival, what did you calculate would be the height of the port hole above the load water line?

(Question objected to, as there is no evidence in this case as to the correctness of the figures that were mentioned in the question.)

A. The draft at the port light on that day in question would be 20 feet 7¾ inches, and the bottom edge of the port light 48½ inches from the water's level or 4 feet and a ½.

Q. What is the circumference of the port? Did you measure it?

A. No, I did not measure that port in particular, but they are all about the same in that ship, they are the usual standard nine inch, what we call the 9 inch port light, so my record might probably be 9¼ or 9⅜.

Q. Now, can you tell us, taking the distance above the water line that you have given of 48½ inches, how many degrees the ship would have to roll to submerge that port?

A. To entirely submerge the port, it would be about 12⅞°, I figure it to be.

Q. And to submerge the light then it—

A. Would be about 10⅜° as I have figured it.

Q. Did you make a drawing showing that distance?

A. Yes, I made a diagram in the letter itself.

Q. Is that it? (Showing witness paper.)

A. Yes.

*Cross-examination.*

BY MR. CHEYNEY:

Q. When you stated that the port was as I think about 4 feet, would have been about 4 feet from the water, I suppose you refer to water which would be perfectly smooth?

A. Perfectly smooth, exactly. Of course, when I took the measurement there was a little wash, too.

Q. You took the measurements in the Delaware River, however?

A. Yes.

Q. While the ship was lying at the wharf?

A. Yes, at the wharf; the water was pretty quiet.

*Re-examined.*

BY MR. PAUL:

Q. I see the diagram is signed "James Carnegie, Assistant Superintending Engineer;" did he make it, however, or yourself?

A. No, those calculations were made by me.

Q. And who drew that?

A. I drew that myself; I simply had him sign it as he is my superior officer.

*Re-cross-examined.*

BY MR. CHEYNEY.

Q. You know nothing yourself of the correctness of the figures as to draft, upon which this calculation is based?

A. No, those were given me; that is the original figures of how the ship stood at the time of leaving and arriving at Liverpool; those were given me.

*Signature waived.*

CAPTAIN J. W. SHACKFORD, sworn and examined.

BY MR. PAUL.

Q. Captain, you are the Marine Superintendent for the International Navigation Co.?

A. I am.

Q. And have been for how many years?

A. Since 1889.

Q. Prior to that time what were you engaged in?

A. Ship Master.

Q. And what steamers and vessels had you been in command of?

A. I was nine years in command of the S. S. "Illinois," five years and a half in command of the steam yacht "Atalanta," and about a year in command of sailing ships, three years as chief officer of the White Star steamers running between New York and Liverpool, and a number of years as an officer on sailing ships. I was five years in command of small steamers besides that.

Q. The "Indiana" and "Illinois" are twin ships, are they not?

A. Twin ships, built in the same moulds.

Q. Please state, in a general way, the dimensions, age and general character of the S. S. "Indiana?"

A. As I remember she is about 350 feet long by 43 feet beam, 38 feet moulded depths.

Q. About how many tons?

MR. CHEYNEY.

Q. What do you mean by "moulded depths?"

A. It is measured from the top of the ceiling to the under side of the upper deck—from the top of the ceiling of the lower hold to the under side of the upper deck.

MR. PAUL.

Q. When was she built and by whom?

A. She was built in '73, I think, either '72 or '73, by Cramp & Sons.

Q. Has she been constantly in commission ever since?

A. She may have been laid up for a few months, perhaps, for alterations; with the exception of that she was in constant employment.

Q. What is her general condition as to navigability at this time, and what was it in May, 1895?

A. She was in excellent condition, in my judgment.

Q. Is it part of your duty to inspect the vessels of the Company?

A. It is; everything appertaining to the deck department.

Q. And in May and the early part of June, 1895, what was her general condition as to seaworthiness?

A. Excellent.

Q. How many tons—I don't think you mentioned that?

A. Between 31 and 3200 tons, I think, as they are now, under the new tonnage law; under the old one a little less; before they were altered they were a little less.

Q. What are your duties with reference to the appointment and selection of officers and crew for the steamships?

A. I appoint all the officers in the deck department, from the captain to the junior officer.

Q. In whose department is the closing and attention to the ports—the deadlight ports of the steamer?

A. The deck department.

Q. Now, in 1895, the latter part of May, and beginning of June, who were the officers in the deck department?

A. I will look at a memorandum; can I? Captain Townsend—

Q. Without going into the list. What has happened to Captain Townsend?

A. Captain Townsend is now deceased; he joined the company in 1881 and was third officer; he was made chief officer in 1887, shortly before I became connected with the Line as Marine Superintendent, and he remained as chief officer until May, 1894, with the exception of perhaps half a dozen voyages; he had command when captains were sick or taken off for some reason, and, in 1894, he was put in command permanently, and remained in command until he died.

Q. What sort of an officer was he from your experience?

(Question objected to as immaterial.)

A. He was a very good officer, indeed, and as far as I know was an excellent commander.

Q. Now, without going into detail, as to each man, it takes up too much time, it is not necessary; the various officers under him, what pains had you taken in their appointment, and what were they in your opinion?

(Question objected to as being immaterial and irrelevant.)

A. Mr. Chapman, the chief officer, was a very good man for that class of vessel; he was a competent officer,

he had had thirty years' experience at sea, had been master of several sailing ships, and I consider that he was—

Q. Is he any longer with the ship?

A. Not with the company any more.

Q. Now Dixon?

A. Dixon, he was a good officer, still in the employ of the company; he has been on one of the Southampton steamers as second officer.

Q. Forbes?

A. He is still third officer of the "Indiana," still in the same vessel.

Q. Do you consider him a good man?

A. A very good man, indeed.

Q. The carpenter, Miller?

A. The carpenter had been many years in the service of the company. I don't remember how many, certainly ten or fifteen, and had always performed his duties in a satisfactory manner.

(General objection to all of this.)

Q. Please describe the various decks and compartments of the "Indiana?"

A. No. 3 hold particular.

Q. With reference to No. 3 lower steerage particularly?

A. There are four decks to that ship, that is, what they call the spar deck (upper deck) and upper steerage deck and lower steerage deck and orlop deck. The lower steerage is the second compartment below the upper deck, the first compartment below is called the upper steerage, the second compartment the lower steerage. And the compartment below is the orlop; below that again, the lower hold.

Q. And when you speak of No. 3?

A. That is the third compartment from forward aft, what is called the collision compartments.

Q. Is that lower steerage used for cargo or passengers, or both?

A. It is used for either.

Q. What is the means of access from the upper deck to the upper steerage?

A. By stairways and the hatch.

Q. And from the upper steerage to the lower steerage?

A. By stairways for the passengers and by taking off the hatch and putting an iron ladder alongside the hatch stanchions when there are no passengers.

Q. From your experience at sea, and especially as captain of the "Illinois," a mate ship, can you tell us what amount of weather or of roll would be required to roll a ship more than twelve degrees?

A. A very moderate roll would roll one of those ships twelve degrees, a very moderate sea, rather—either on the side or from the quarter.

Q. Would there be any difference as to the water coming through an open port upon the weather and leeside of the ship?

A. Well, if there was any sea and the ship was not rolling and the lee port was not under water, of course, it would be more likely to come in to leeward.

Q. Otherwise it would not make much difference?

A. Otherwise it would not make much difference; it would roll a little more perhaps to leeward than to windward in ordinary weather.

*Cross-examination.*

BY MR. CHEYNEY.

Q. Captain, do I understand that the hold referred to is sometimes used for passengers?

A. Yes, sir.

Q. For what purpose; were there berths in that hold?

A. Not permanent berths; portable berths.

Q. Berths had at times been placed in that hold?

A. Yes, we carry passengers there frequently.

Q. What was there just above this hold?

A. Just above this hold was the upper steerage, the cabin deck or the upper steerage deck.

Q. What means of communication were there with this hold with the exception of the hatches?

A. No communication whatever.

Q. Were the stairways put down through the hatches at the time they were used for steerage passengers?

A. When it was used for steerage passengers there were temporary stairways put in the hatch from each side, from each side of the hatch, from the upper steerage.

*Re-examined.*

BY MR. PAUL.

Q. Is the first engineer who was there with the "Indiana" in '95 still there?

A. He is not in the service of the Company any more.

*Re-cross-examined.*

BY MR. CHEYNEY.

Q. How long has Captain Townsend been dead?

A. I think he died last year; I think last fall, if I remember. Some time last year, I don't remember exactly when it was.

*Signature waived.*

---

HENRY TAGGART, sworn and examined.

BY MR. PAUL.

Q. What is your business?

A. Assistant Superintendent American Line.

Q. How long have you been with them?

A. Between twenty-two and twenty-three years.

Q. And what is your particular business with reference to the ships of that line?

A. I have charge of the discharge and loading of the ships.

Q. Do you remember superintending the unloading of the "Indiana" in the early part of June, 1895?

A. Yes, sir.

Q. When did you go there and what did you find?

A. My business when a ship arrives is to go on board and see that everything is all right, before she starts to unload.

Q. What time of day did you go there on this occasion; do you remember?

A. I forget now.

Q. Were the hatches off when you went there?

A. No, sir, I went aboard with the men.

Q. Did you see the hatch of No. 3 lower steerage taken off?

A. I seen them taking it off, yes, sir.

Q. Did you see the interior of that compartment?

A. Down below?

Q. Yes?

A. Yes, sir.

Q. Did you see it at once before the cargo had been taken out?

A. Yes, sir.

Q. What did you see?

A. I was going along the deck from one hatch to another; they sang out, "Stuff all wet down here," and I jumped right down; there it was wet.

Q. How was the cargo stowed in that compartment? What was in it, what sort of cargo was in it, and how was it stowed?

A. There was some tin in it, four or five cases of machinery, and bales of burlaps.

Q. How was it stowed? How high?

A. Stowed in one tier, right across the ship, all over.

Q. How high up did the cargo come, in a general way—some might have been higher and some lower?

A. That high (indicating two feet and a half or three feet high).

Q. Did you see the port dead lights in that compartment?

A. I saw them; yes, sir.

Q. Were they above or below the line of the cargo?

A. Above, up near the beams.

Q. Was it possible to pass from the hatch to them across the cargo—walk across?

A. I walked across the cargo, on the top of the cargo, fore and aft, this way (illustrating, bending slightly).

Q. Did you notice these port holes when you were there?

A. I seen nothing the matter with the port holes.

Q. Were they closed or open?

A. All closed.

Q. How long would it take you to take off the tarpaulin and hatch of that No. 3 steerage compartment?

A. With the men going to work?

Q. Either the men going to work, or if you went there yourself hurriedly to take it off so as to—

A. The men would go down there and take off the hatches in less than five minutes, all off.

Q. How long would it take to take a section out, for one man to go down into it?

A. About three or four minutes; I could take one off myself.

Q. In how long a time?

A. Just throw the tarpaulin up and grab the ring, and throw the hatch aside; the hatch is in two parts, you know, fore and aft, piece between, and the hatch is set right on, four on each side, ring in each one, both sides of the hatches.

Q. And, in order to get down, you have to tear up the tarpaulin, and take hold of the ring in the hatch and throw it to one side?

A. If there was more than one man there, it would be easier for them to do it than it would be for one man to do it, but I could do it myself alone.

Q. How long would it take two men, we will say, to take up the tarpaulin and take out one section of the hatch, through which to get down?

A. They would not do it much quicker than one.

Q. Well, how long?

A. About two or three minutes.

Q. Are they very heavy, these sections? Can one man lift them out?

A. No, sir, they are not heavy.

Q. Can one man lift them?

A. I can lift them myself.

Q. Did you take any measurements, Mr. Taggart, of this No. 3 compartment, with reference to those port holes?

A. Yes, I think I took a measurement there.

Q. Do you remember the height of that compartment?

A. That deck is about seven feet and a half.

Q. And how high above the lower deck is the port hole, the lower edge of the port?

A. About five feet, somewheres around there.

Q. And how wide is the port itself in diameter?

A. About ten inches, something like that (indicating.)

Q. Did you measure the size of these burlap bales that were stowed there?

A. Yes, sir.

Q. How large are they?

A. About three feet on the edge, about two or two and a half I think on the flat, about eight feet long.

Q. You say there was one tier of this?

A. Some were on the flat and some were on the edge, to make it chock, and so that they would not get adrift.

*Cross-examined.*

BY MR. CHEYNEY.

Q. Do you remember who called your attention to the fact that there was water in this hold?

A. The men, just as they jumped down the hatch, they hollered everything was wet down here.

Q. Was that before any cargo was taken out?

A. Before any cargo was touched.

Q. You went down immediately?

A. I went right away.

Q. Was there water in the hold at that time?

A. In the deck?

Q. On the deck?

A. No, sir.

Q. Had any water leaked out into any of the other holds?

A. It might have run down the hatches, down below.

Q. Do you know as a fact whether any other cargo was damaged except in this hold, in this one hold?

A. I don't know now whether there was or not.

Q. The cargo which was in that No. 3 hold was pretty badly damaged, was it not?

A. All in the hatch was wet, all the way down. I don't think anything in the other deck was wet, clear of the hatch.

Q. Do I understand there was some cargo wet in the lower deck beneath the hatch?

A. All the way under the hatch, as it went down, went down through that hatch.

MR. PAUL.

Q. But not away from that hatch?

A. Not on the deck at all.

MR. CHEYNEY.

Q. How is the hatch in the deck in that hold, flush with the deck or with combings in that No. 3?

A. There is not much of a combing around it at all, around the lower deck where the water was.

Q. It could leak right down through the hatch?

A. Yes.

Q. The cargo which was in this hold was pretty badly damaged, was it not?

A. On the deck you mean?

Q. On the deck?

A. Yes.

Q. Do you know how high the burlaps were wet, were they wet all over?

A. Wet all over, and swollen out, and a number of hoops were bursted.

Q. Was there anything on the sides of the hold to indicate how deep the water had been, was there any mark left there?

A. No, sir.

Q. Where was the cargo which was damaged in this hold? Was it that which was immediately beneath, joining the port or all over it?

A. All over.

Q. There evidently then had been enough water come in to cover the deck completely? In other words, the damage had not been done simply by the water spraying in the port, but enough water had come in to cover the deck entirely?

A. One end of it was as wet as the other, where the port was, at the end where the port was, it got wetter on the top.

Q. Where was the port, in what end of the hold?

A. Right by the bulkhead.

Q. What I mean was, that the cargo which was damaged was not that which was near the bulkhead, near the port hole, but all the cargo which was lying on the deck was damaged?

A. Some was worse than the other.

Q. But all of it was more or less wet?

A. Yes.

Q. And the burlaps had swollen and bursted some of the hoops?

A. Yes, sir.

Q. I wish you would describe what coverings there are for the port in that hold, what covers are there: there is a glass cover?

A. There is an iron cover on the inside. I don't think there is any glass in it.

Q. Is there but one covering for that port hole?

A. It all lifts, it all opens together.

Q. Let me understand, as Captain Shackford suggests, there is a glass port; does that open or not, can you open that?

A. Glass port?

Q. Yes?

A. I don't know whether you can or not.

Q. What was the condition at that time?

A. All closed.

Q. Could they be opened or were they fixed there?

A. Oh, yes, they could be opened.

Q. How, by unscrewing them?

A. They were the ordinary ports which were fitted on, and could be unscrewed on one side.

Q. In addition to that there was an iron port cover?

A. Yes, sir.

Q. That was fitted on the inside?

A. Inside.

Q. And that, of course, could also be opened? Is that fitted in the same way as the glass port, or not?

A. I could not tell you that.

Q. You don't know particularly how it is fitted?

A. No, sir.

Q. When you saw the port was closed at that time, do you mean—

A. Everything was closed, I did not see anything about it being opened.

Q. The men had not opened it for the purpose of allowing light to go in?

A. It was daylight, and they just jumped down there.

Q. It had not been opened? It is customary, though, for the stevedores to open the iron port covers, is it not?

A. When they are discharging. When they are loading they close them up, the stevedores see that they are closed.

Q. Did you make any examination to ascertain where this water had come from, how it had gotten into the hold?

A. No, sir.

Q. You did not investigate that at all?

A. No.

Q. Did you see anything to show how it had gotten into the hold?

A. No.

Q. You don't know whether it came in through this port or not?

A. No.

Q. Were you walking around there at various times? You were in the hold at various times?

A. All the time.

Q. Do you mean to tell me you had never looked to see?

A. The surveyors have that charge of it.

Q. No matter what the surveyors had. What did you do? Did you not look around yourself to see where the water had come from?

A. I knew there had been water there, but there was none there then.

Q. Did you not look around to see how it had gotten in?

A. Yes.

Q. What did you see, if anything; if so, how had it gotten in, could you tell whether it came in through the port, or whether it came in through the hatch, or where?

A. No, I could not tell that, there was nothing to show me that.

Q. Now, do I understand, Mr. Taggart, there was nothing that you saw or that you looked around and could see nothing to show, to indicate, how the water had got in, do you understand? Which do I understand to be your meaning? That you looked and could not see how the water got in, or that you did not look?

A. I looked around to see if there was a leak or anything, but I did not see anything to show anything.

Q. That cargo was discharged under your supervision?

A. Yes, sir.

Q. And the surveyors, as you say, made an examination; was that in your presence, or not; were you there, in the hold, when they were there?

A. No, sir.

Q. You don't know what they did then?

A. No.

Q. Was the cargo loaded in the hold on the outward voyage?

A. Yes.

Q. Do you know whether or not any changes or repairs were made in any way, either to that port, or anything in connection with that hold, before the cargo was loaded?

A. Nothing that I know of, I did not see anything.

Q. Did you look to see whether anything had been done or not?

A. If they had been doing anything I would have seen them do it.

Q. Are you prepared to say that that port or port cover were not repaired while the vessel was in Philadelphia?

A. I am not prepared to say; I did not see anything at all; I was there all the time. I did not see anybody repairing anything.

Q. You are not in that hold all the time, you are all over the vessel?

A. No, sir, all over.

Q. When was your attention first called to the fact for the purpose of testifying here, recently or some time ago?

A. What do you mean, testifying in this case?

Q. When was your attention first called to the matter?

A. I don't know how long it has been, it was not just now.

Q. Some little time, some months ago?

A. Yes.

*Signature waived.*

NOVEMBER 8TH, 1897.

Testimony taken on behalf of Respondent at the office of Biddle & Ward, 505 Chestnut Street, Philadelphia, at 2 P. M.

Present:

H. L. CHEYNEY, Esq., for Libellant.
J. RODMAN PAUL, Esq., for Respondent.

---

MARK K. BOWMAN, sworn and examined:

BY MR. PAUL.

Q. What is your business and residence?

A. I am Treasurer of the James Reilly Repair and Supply Co. And do you mean my New York residence?

Q. Your office in New York?

A. 230 West street.

Q. What is the business of the Reilly Company?

A. Steamship repair work and supplies.

Q. What has that company to do with the American Line here and in New York in reference to repairs?

A. They do all of the repair work on the ships of every character.

Q. Is there anything done by any other shops except the Reilly shops for these steamers?

(Question objected to.)

MR. CHEYNEY.

I don't suppose the witness is exactly competent to answer.

MR. PAUL.

Q. On this side I mean?

MR. CHEYNEY.

I suppose he has a contract.

MR. PAUL.

Q. Have you an exclusive contract, on this side I mean?

A. Yes, it is understood generally that the Reilly Company is to do all the work that develops on the ships.

Q. What is the method by which the repairs are done after any voyage, and how do you know, how are you notified as to repairs needed?

A. We generally get a requisition.

Q. And they then perform the work that is required in the requisition?

A. Yes.

Q. Is there something to be done after every voyage, as a rule?

A. Yes, always.

Q. Was this the practice as well in '95 as it is now?

A. Yes, it always has been to my recollection.

Q. How long have you been doing the work?

A. The Reilly Co. was organized in 1892, they have done it since then; and before that Mr. Reilly did it a good bit previous to that time, over twenty years, to my knowledge.

Q. Will you please look at this document in the letter book dated June 6th, 1895, and state what that is?

A. That appears to be a copy of a requisition for work in the sailing department of the "Indiana."

Q. What voyage would that apply to?

A. Apparently for the voyage '82 as indicated on the face of the requisition.

Q. Where was the "Indiana" at that time? Where was that order received from?

A. It was supposed to be in Philadelphia, and supposed to be received from the Marine Superintendent's office in Philadelphia.

Q. Can you tell from the books of your company?

A. Yes.

(The press copy is offered in evidence.)

Q. Is there any new material required there for the dead lights or ports of the vessel in that requisition?

A. I don't see anything in that requisition.

Q. Would it have been if new material or a new cover, for example, for any of the ports had been required; would that have appeared in that requisition?

A. Very likely, because that would be an important part of the dead light, and would have been ordered to be done.

(Question objected to as not being within the knowledge of the witness.)

Q. Have you the bills which were rendered in consequence of that requisition for repairs after the voyage Nov., '82?

A. I have the bills, here they are.

Q. Does that show everything that was done by your company on that occasion?

A. Yes, sir.

Q. Is that an unusual bill in size or amount?

A. No. sir.

Q. How much was done for deck purposes as included in that bill?

A. All the deck work.

Q. Yes, all the deck work? I understand deck work to cover the question of overhauling ports, etc.?

A. Repairs to the hull and the deck, and deck furniture and fixtures, and everything of that kind, about eighty dollars worth of work.

Q. Is that a large or small sum for any voyage?

A. I should say that was a small sum.

Q. Is there any reference to ports in that bill?

A. Yes.

Q. What is that?

A. There is a charge here for steerage air ports on this bill.

Q. How much?

A. $3.21.

Q. Does it appear what that is for?

A. It appears to be a general overhauling of the steerage ports.

Q. Any particular ports?

A. No.

Q. How many steerage ports are there?

A. I don't know exactly, I should judge at least twenty-five—fifty perhaps.

Q. How often were those ports overhauled?

A. They are overhauled more or less—well I don't know what you mean exactly by "overhauled."

Q. I mean by "overhauled" new rubber, for instance, put in, but no new structure in the way of material, metal work or glass?

A. We always examine every ship to see that they are all right, that the rubber is in good condition, and they are all right.

MR. CHEYNEY.

Q. Do you know that of your own personal knowledge?

A. I know that from an experience of thirty years, that that is the custom to do that.

MR. PAUL:

Q. Is there anything on that bill showing a new cover or other new material in the way of glass or metal for any port on the vessel after that voyage?

A. No.

Q. Would it have appeared in that bill if it had been furnished by you?

A. Yes.

Q. Was there anyone else who furnished it, to your knowledge?

A. No, sir.

(Bills marked "B. I. M., November 8th, '97," offered in evidence.)

*Cross-examined.*

BY MR. CHEYNEY:

Q. Mr. Bowman, all that you know in regard to this matter is that your Company made certain repairs to the "Indiana" at the end of that voyage, isn't it?

A. Yes.

Q. You cannot tell positively whether the ports were examined by the officers of the Company or any of the crew every voyage or not, can you?

A. I can tell by the charges, yes.

Q. How can you tell by the charges?

A. Because there is nothing that the men do unless there is a charge made.

Q. Where is your office, your place of business, in New York?

A. Yes.

Q. You are a resident of New York?

A. Yes.

Q. How do you know, as a matter of fact, what is done by the officers or crew of the steamship "Indiana" when you are in New York? You have no connection with the Company except to make repairs upon requisition, isn't that so?

A. I based my reply entirely on the method of doing business; when anything is done there is always a charge made to cover that work, whatever it may be, it may be ever so trifling, if it only amounts to a penny it is charged, and I based my reply on that fact, that that is the custom of the business; if anything was done, no matter how little it might be, there would be some sort of a charge made to cover it.

Q. If anything is done by you?

A. By the Reilly Company's men.

Q. But you are not speaking and can't speak of what is done by the officers and crew of the steamship "Indiana" or by any other person, can you?

A. Well, I don't quite see what you want me to say there, what you mean.

Q. I want you to say yes or no.

A. I know, but I don't see the point; I would like to qualify that answer. Having in mind the subject that we are talking about, I know that no member of the crew would do anything of that kind; if there was anything of that kind to be done, it would naturally be done by the Reilly Company that was there for that purpose, organized for that purpose.

Q. Let me call your attention to what you are here for; you are here to testify to facts which are within your knowledge?

A. Exactly.

Q. Not to what probably is done in the ordinary course of business; you don't know, as a matter of fact, whether or not the ports of the "Indiana" are examined by

the officers or crew at the end of every voyage, or any other person in the employ of the International Navigation Co.?

A. Whether they are examined?

Q. Examined to see whether they need any repairs?

A. I don't think I am a competent witness for that evidence; you ought to ask the officers of the International Navigation Co. about that.

Q. Your answer rather indicated that you meant to testify that they were examined. All that you did and all that you know is, that your Company makes repairs and furnishes supplies upon a requisition by the officers of the International Co.?

A. Yes.

Q. And you speak of the repairs which are done by your Company?

A. Exactly.

Q. Your Company of course makes no examination or does nothing except to receive a requisition, usually from Captain Shackford, I suppose?

A. Or from some other officer in charge, issuing orders.

Q. Captain Shackford has charge of the deck department, and this requisition I think is in the sailing department, is it?

A. Yes.

Q. Of course, the bill which has been—the charge in the bill which has been shown here for general overhauling of the steerage ports does not show what repairs were done to any particular port, you cannot tell from that what was done?

A. That bill would indicate, the records would indicate that there was more or less done to a number of ports, as the charge is in the plural there, you will see, "air ports."

Q. You personally don't know what ports received attention?

A. No.

Q. Has your company a place of business in Philadelphia?

A. Yes.

Q. And these requisitions are sent from Philadelphia for the vessels of the American Line sailing here to your office in New York first, are they?

A. No.

Q. Where?

A. They are sent to our Philadelphia office.

MR. PAUL.

Q. Where do you keep the records eventually? where are the things kept?

A. The records, in New York.

MR. CHEYNEY.

Q. You are in New York yourself?

A. Yes.

Q. Who manages the Philadelphia end of it?

A. I do.

Q. Are you here?

A. I am here once a week.

Q. What day are you here?

A. No particular day.

Q. Have you any personal knowledge of any of the repairs which were made to the steamship "Indiana" upon this particular voyage?

A. Only from the records.

Q. And you only pretend to testify, refreshing—or getting your information from the records?

A. I certify to the correctness of the records.

Q. You have a foreman in charge of your shop here, I suppose, have you not?

A. Yes.

Q. And the records are made up from information given by him?

A. No, the records, charges, are not made up that way.

Q. What is your method; tell me briefly what your method is for making up charges for work done in Philadelphia?

A. The man who has charge of the department keeps the time of the men under him in his department; he has a book with the names of the men under him, and he notes down there periodically during the day what each man has been doing.

Q. In short, he keeps a time book?

A. Yes.

MR. PAUL.

Q. How about the material?

A. The material part is kept by the storekeeper, who makes a charge in the material book.

BY MR. CHEYNEY.

Q. Those time books and the material books are sent to you in New York and the bills are made up in that way?

A. Yes.

Q. Mr. Bowman, do you personally remember anything about the repairs upon this particular voyage or not?

A. No.

*Re-examined.*

BY MR. PAUL.

Q. Mr. Cheyney asked you whether you could say from that charge, time in overhauling ports, what was done to any particular port; can you say what sort of work was put on those ports, as to whether it was material or whether merely it was all labor?

A. There is also a little charge for rubber which I consider so trifling that it is hardly necessary to allude to, it is for renewing a rubber cushion in the port light, for making it tight.

*Re-cross-examined.*

BY MR. CHEYNEY.

Q. The charge in this bill is for ¼ pound of pure rubber; do you know, Mr. Bowman, how many ports that would be sufficient for? Are you familiar enough with the details of the business to say?

A. Yes, it would depend somewhat on the size of the rubber; it might be enough for two or three ports, it might be enough for one; it all depends on how much they had to do; the rubber is light, and a little piece of it would go a great way.

Q. Have you any idea what weight of rubber would be required to renew entirely each port?

A. As I said, it would depend on the size of the rubber. They vary in size very much; they vary all the way from a quarter of an inch in width to half an inch.

Q. And you don't know, of course, what they were on the "Indiana?"

A. No.

DECEMBER 28TH, 1897.

Testimony taken on behalf of Respondent at the office of Biddle & Ward, 505 Chestnut Street, Philadelphia, at 2 P. M.

---

Present:

H. L. CHEYNEY, Esq., for Libellant.
J. RODMAN PAUL, Esq., for Respondent.

HIRAM DICKSON, sworn and examined:

BY MR. PAUL:

Q. What is your occupation now?

A. Second officer.

Q. Of what?

A. S. S. "St. Paul."

Q. And in May, 1895, what was your position?

A. Second officer.

Q. Of what?

A. S. S. "Indiana."

Q. Do you remember the voyage from Liverpool to Philadelphia in May, 1895, during which the cargo was wet by the open port or dead light?

A. I do.

Q. What is your duty on shore with reference to the inspection of ports and dead lights?

A. My duty is to see that they are closed and secured before cargo is taken in the ship.

Q. Is that your duty as second officer?

A. It was on that ship—yes, sir.

Q. In Liverpool, before starting on this voyage, did or did not you perform that duty?

A. I did.

Q. What did you see and do with reference to the ports and dead lights upon the "Indiana" before that voyage?

A. I saw that they were all secured, and all bolted and everything, that is, with the carpenter.

Q. You mean you went with the carpenter?

A. After he had performed his duties I went around to see if they were properly secured.

Q. What did you find as to the ports and dead lights on that occasion?

A. They were all O. K., all, all right.

Q. Were there any of them damaged or injured in any respect?

A. None at all whatever.

Q. At the time you saw them were they secured?

A. They were secured thirty hours before leaving.

Q. That was the time you saw them?

A. That was the last time I saw them.

Q. How about the dead light of No. 3 lower steerage on the starboard side?

A. That was closed and secured.

Q. Was that towards the wharf, or towards the open—

A. Towards the wharf.

Q. At Liverpool?

A. At Liverpool.

Q. Now, during the first few days after you sailed from Liverpool, what sort of weather did you have? I will hand you the log of the "Indiana" for that voyage so that you can refresh your memory with it.

A. Do you want these read?

Q. No, just glance over it, if you don't remember, and tell us in a general way during the first few days of the voyage what the character of the weather was?

A. We had fresh breeze to moderate breeze, cloudy, hazy and rainy, moderate sea, rolling heavily at times, heavy swell, choppy head sea.

Q. Well just glance over them (I offer them) and state whether the weather was clear during all the time prior to the discovery of the open port hole or what it was?

A. Strong breeze at the time, rough sea, and squally at that time, at the time of the discovery, and before that, before that we had fresh breeze, partly overcast, passing rain squalls, fresh breeze, heavy swell on; that is about all.

Q. About how high above the surface of the water, when smooth, would be this port or dead light of No. 3 lower steerage, when loaded?

A. At the time, I should judge about between two and three feet.

Q. In weather such as you have read, if that port had been open, would water have come in?

A. Yes, sir, water went three or four feet above it.

Q. Now tell us, in your own way, what you know about the finding of this open port hole?

A. Well, it was my watch below and I was called out to go down into the lower steerage to clear the scuppers. I did not know anything at the time, that the port was open, I was not told about it, I was told to go down, and when I got down there the dead light was closed.

Q. Had the cargo been disturbed at all when you went down?

A. No, none whatever.

Q. Was the cargo above or beneath the dead light?

A. Beneath.

Q. How much beneath?

A. I should say, roughly, a couple of feet.

Q. Was it possible to get from the hatch to the dead light across the cargo?

A. Yes.

Q. Was there any difficulty about that?

A. None whatever.

Q. What was the cargo, in a general way, in that hold?

A. Jute, that is, that bagging stuff.

Q. What was its condition, was it wet when you saw it?

A. Yes.

Q. What did you do?

A. Started to clear away over the port scupper.

Q. Why was that?

A. Because that one was clogged up. The straps upon the bail was broke, and over the dunnage, overhanged, over the scupper, the weight of the water bursted the bail, so that it would hang over the scupper.

Q. And that clogged it up?

A. And that clogged the scupper up, the other scupper was perfectly clear.

Q. Was there water there then or had it run down?

A. There was very little there then at the time, no more than two inches, if it was that.

Q. What was the effect of the water upon this bagging stuff?

A. It made it swell.

Q. And what was the effect of the swelling upon the bands with which it was bound?

A. It broke part of them.

Q. So that the swollen bagging came over and clogged this scupper?

A. That one particular one, yes.

Q. You did not know, yourself, anything about the open port, I understand, until you were told to go down?

A. Not until I was told to go down, by the captain.

Q. How about the dunnage, was that proper?

A. It was properly dunnaged.

Q. Do you know how this occurred?

A. No, sir, I do not.

Q. You were told that it had been found open?

(Objected to.)

A. After I went down there.

Q. Did you look at the dead light when you were down there?

A. Not until after we got the scupper clear.

Q. Did you look at it then?

A. Yes, it was properly secured then.

Q. Did you see anything wrong with it?

A. No, sir.

Q. Can you understand how it could have been opened?

A. No, I do not.

Q. Now, when you got into Philadelphia, did you see these ports, dead lights, especially the starboard dead-light of No. 3, lower steerage, again?

A. Yes, sir.

Q. What was your duty on arrival in port after cargo is taken out?

A. To inspect the hold and see that it is ready to go in again.

Q. Did you inspect it on this occasion in Philadelphia?

A. I did.

Q. What was the condition of the dead lights, especially of this No. 3 lower steerage starboard dead light at that time?

A. It was all right.

Q. Was there any new cover put on it?

A. None whatever.

Q. Was it repaired in any way?

A. No way at all.

Q. Would you have noticed it?

A. I would have—it would have been reported to me before they cleared bill for it.

Q. You feel sure that it had not been repaired?

A. I feel sure about that, yes.

(Mr. Paul offers the Log Book marked "B. I. M., Dec. 28, '97.")

(Objected to by Mr. Cheyney.)

*Cross-examination.*

BY MR. CHEYNEY.

Q. Mr. Dickson, have you any particular recollection of having made an inspection of the port in question prior to the departure of the Indiana from Liverpool?

A. From Liverpool?

Q. Yes?

A. Yes, sir.

Q. How did you come to make a particular inspection of this port?

A. Not of the one, not of that one particular one, but of all the hold, all the steerages, for this reason, on leaving Liverpool, the steerages sometimes we use them, the holds, for steerage passengers, and we are very particular about the steerage, because we can't say to the last minute whether they are going to use them for steerage passengers or not.

Q. Your recollection is, that you made an inspection of all the port holes in that particular compartment, No. 3?

A. And the shore captain as well, in Liverpool.

Q. You don't know anything about what he did?

A. I know that he was there.

Q. But you don't know what he did there? Was he there with you?

A. I was going down when he was coming up.

Q. But you don't know what he did when he was down there?

A. No.

Q. You say you don't know until the last moment before leaving Liverpool—

A. Not the last moment, twenty-four or forty-eight hours—sometimes as late as six hours, that there is no cargo, and sometimes we use it for steerage passengers.

Q. What time of the year was this? May, the latter part of May?

MR. PAUL.

Yes.

MR. CHEYNEY:

Q. What did you do, when you made that examination, how did you make it?

A. I go around and try the bolts with my fingers.

Q. You simply went around and tried the bolts to see whether they were fastened or not?

A. Yes.

Q. How many ports are there in that No. 3 lower steerage?

A. I am not sure, but I think there are six.

Q. How large is that hold?

A. I should say about, nearly twelve inches in diameter.

MR. PAUL: Feet you mean.

A. Do you mean the dead light or hold?

MR. CHEYNEY: The hold.

The Witness: I don't know, sir.

Q. How high is it?

A. 7½ feet.

Q. How long is it?

A. I should say about twenty feet, that is guessing. I don't know.

Q. You can give a fairly good guess. How wide is it?

A. About fifty feet. About that.

Q. The whole expanse, from one side of the ship to the other?

A. Yes.

Q. Where was the port light that you understand became open?

A. Starboard after one.

Q. There are three on each side, are there?

A. I think there is.

Q. How much water was there when you went down in that hold, No. 3 lower steerage?

A. About an inch and a half to three inches on the port side, the starboard side was all clear at the time.

Q. The burlaps were quite wet?

A. They were quite wet. Of course, the water coming in through that port would go over the top of the burlap and soak down.

Q. Are you in the habit of opening the hatches during the voyage in this hold?

A. No.

Q. Do you know how it was discovered, that there was some trouble about this hold in this particular voyage?

A. Only by the soundings; did not know what was the cause of it at the time; the soundings indicated there was that much water in that hold.

Q. Are you in the habit of sounding down into each hold during the voyage?

A. Yes, sir, every twenty-four hours, sometimes every six hours, four hours, or eight hours, all according to the weather.

Q. Your supposition is there was found an extra amount of water in the hold and the hatches were opened?

A. They were opened.

Q. This was not the lower hold, was it?

A. Where the water was?

Q. Yes?

A. The lower hold.

Q. Do you know how long after it was discovered there was trouble there that you went down into the hold?

A. No, I do not.

Q. You don't know who was down there first?

A. Who was down there? The carpenter and chief engineer, I believe, I am not sure.

Q. Who was the chief Engineer?

A. Devlin, his name was.

Q. Where is he now?

A. I could not say, he is not with the Company any longer.

Q. Where did he hail from? Do you know?

A. Scotland, somewheres.

Q. Did he not live in America?

A. Yes, he lived in America, had his home in Newark, somewhere, I believe. He hailed from Scotland.

Q. Was his name Devlin or Dowlin?

A. Devlin, I think it is spelled.

Q. Of course, all the recollection you have about your examination is, that prior to the departure of the vessel from Liverpool you went around and tried all of the bolts, as it was your duty to do, to see whether they were tight or not, and your recollection is that all were tight?

A. They all were tight.

Q. How are those port lights built in the "Indiana," do they open upwards?

A. The dead light, that is the glass part, opens fore and aft, but the dummy or cover opens up and down.

Q. Let me understand: there is an iron dummy or cover which opens up and down, which fits over the glass?

A. The glass dead light.

Q. The glass dead light, which opens fore and aft. Each one of those, that is the iron dummy or cover, and the dead light, have separate screws or bolts?

A. Yes, they are on separate hinges, and have separate bolts.

Q. Were both of those closed at the time of the departure from Liverpool?

A. They were.

Q. Could you examine the screws of the port light without opening the dummy or iron cover for the port light?

A. You could not close the dummy unless the dead light was properly closed and screwed.

Q. You could not?

A. No.

Q. You could not examine that from outside?

A. You could see from outside.

Q. You could see that it was closed?

A. Yes.

Q. How was it constructed that you can see that?

A. It is snug. That is, in the hold of the ship the dead light closes snug, just the same as that door; you can tell if it is ajar or not from a little distance by looking at it.

Q. You could not tell that if the iron dummy or cover was closed?

A. The dummy would not close properly unless the dead light was closed properly.

Q. Of course, you assumed that the port light was closed properly? You made no other examination than

that, from the fact that the dummy was closed? You made no other examination. You simply looked to see if the dummies were properly closed?

A. Yes.

Q. Who made these entries in regard to the accident?

A. The officer's signature is there.

Q. You did not make the entry?

A. No, sir.

Q. Who was H. C. Chapman?

A. He was the Chief Officer.

Q. Where is he now?

A. Not in the employ of the company.

Q. Whose handwriting is that? (indicating.)

A. That is Chapman's handwriting, or Forbes, Forbes's signature is at the bottom. That was Forbes's watch at the time this went on: his watch started at 8 in the morning.

Q. Do you know Mr. Chapman's handwriting?

A. Yes.

Q. Is this part of the book in Chapman's handwriting?

A. Yes, sir. The chief officer keeps this book altogether: the officers keep the scrap log which this is copied from.

MR. PAUL.

Q. Whose watch was it to which that entry belongs?

A. Forbes.

*Signature waived.*

97 And afterwards, to wit, on the 28th day of April, A. D. 1899, opinion of the court being filed, is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

THE FARR AND BAILEY MANUFACTURING COMPANY
*vs.*
INTERNATIONAL NAVIGATION COMPANY. } No. 62 of 1895.

McPHERSON, *District Judge:*

This action is brought to recover damages to cargo under the following state of facts. The respondent is the owner of the steamship "Indiana," a vessel plying between the ports of Liverpool and Philadelphia. In May, 1895, twenty bales of burlaps in good condition were received by the vessel in Liverpool, consigned to the libellant, in Philadelphia, and a bill of lading was given therefor.

The bales were stowed with some other goods in compartment No. 3 of the lower steerage deck; but the compartment was not full, only one tier of cargo, two or three feet high, covering the floor, so that access to the ports was very easy and unobstructed. Four or five days after the vessel left Liverpool water was discovered in the compartment; and when the hatches were opened, a day or two later, it was found that the after part on the starboard side was admitting water freely as the vessel rolled. Both covers of the port were unfastened and open, but there was no sign of injury to either, or to the surroundings of the port. No severe weather had been encountered, and no accident was known to have happened to the vessel. The parts in the compartment were inspected the day before the vessel sailed, and were believed to be closed; but several hours elapsed between the time of inspection and the time of sailing. The respondent's burlaps were injured by the water thus taken into the ship, and the present suit has been brought to determine the respondent's liability.

It is conceded that the case requires the court to decide what bearing the so-called Harter act of July 1, 1893, (vol. 2, Supp. Revised Statutes, page 81) has upon the rights of the parties; for it is clear that if this statute has made no change in the respond-
98 ent's obligation to furnish a seaworthy vessel, the libellant is entitled to recover. As was said in the Morrison, 153 U. S., 215, "the obligation rested on the owners to make such inspection as would ascertain that the caps and plates were secure. Their warranty that the vessel was seaworthy in fact did not depend on their knowledge or ignorance, their care or negligence. The burthen was upon them to show seaworthiness, and if they did not do so they failed to sustain that burthen, even though owners are in the habit of not using precautions which would demonstrate the fact." This burthen the present respondent also did not sustain, for the evidence before us does not show affirmatively that the vessel was seaworthy when the voyage began. The best that can be said of

the proof is, that it leaves in doubt the question, how and when the port came to be opened; and such uncertainty would not relieve the carrier from liability under the rule above quoted.

The respondent contends, however, that the third section of the act of 1893 provides the needful relief. The positions are: First, that the respondent used due diligence to make the vessel "Indiana" in all respects seaworthy, and properly manned, equipped and supplied; and therefore that the respondent cannot be obliged to make good the libelant's loss, because such loss arose from a fault or error in navigation or in the management of the vessel; second, that even if the loss occurred, not from a fault of navigation or management but from unseaworthiness at the beginning of the voyage, the act has so modified the respondent's obligation to furnish a seaworthy vessel, that if due diligence was used in that behalf the respondent is not liable to make good the loss.

Taking up the second position first, it must be conceded that the third section of the statute arouses some such expectation as the respondent supposes to be enacted into law. The section begins by saying, "that if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied," and after this beginning one naturally expects to hear that, if the statutory condition of diligence be fulfilled, the vessel and her owners shall be relieved from at least some of the liabilities caused by unseaworthiness.

But we do not hear this at all. Even if the statute intended to replace the carrier's obligation to furnish a seaworthy vessel by the less extensive obligation to use due diligence to furnish such a vessel, the intention has not been expressed. The section goes on to provide, not that the carrier's warranty of seaworthiness shall be modified, but merely this: "neither the vessel, her owner or owners, agent or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel; nor shall the vessel, her owner or
99 owners, charterer, agent or master, be held liable for losses arising from dangers of the sea or other navigable waters," or from other causes not now important. In other words the section does not touch, and therefore leaves unchanged the carrier's liability for unseaworthiness; and this, as we understand the decision of the Supreme Court, has already been decided by that tribunal.

In the case of the Delaware, 161 U. S., 459, the general scope of the act was considered, and it was decided that its whole object was "to modify relations previously existing between the vessel and her cargo." It was accordingly held that the general language of section three, which is broad enough to cover a case of collision did not relieve an offending vessel from liability for such a wrong, although it was caused by a fault in the navigation or management of the vessel. In the Carib Prince, 170 U. S., 655, the court says, distinctly, referring to section three: "The exemption of the owners or char-

terers from loss resulting from faults or errors in navigation or in the management of the vessel, and for certain other designated causes, in no way implies that because the owner is thus exempted when he has been duly diligent, that thereby the law ...s also relieved him from the duty of furnishing a seaworthy vessel. The immunity from risks of a described character, when due diligence has been used, cannot be so extended as to cause the statute to say that the owner, when he has been duly diligent, is not only exempted in accordance with the tenor of the statute from the limited and designated risks which are named therein but is also relieved as respects every claim of every other description, from the duty of furnishing a seaworthy ship." In the latest opinion upon the statute, to be found in the Sylvia, 171 U. S., 462, the effect of the decision in the Carib Prince was stated to be, that the act "has not released the owner of a ship from the duty of making her seaworthy at the beginning of her voyage." These cases furnish a sufficient reply to the respondent's second position. We understand them to rule that the obligation of the owner to furnish a seaworthy ship is now just what it was before the act of 1893 was passed. In order to fulfill that obligation he must show more than due diligence; he must show as heretofore that he has in fact furnished a seaworthy vessel; and if he fails in his proof, he is still liable for an injury arising from an unseaworthy condition.

This brings us to the consideration of the first position, which might present two questions of fact: First, was the respondent's ship unseaworthy when she left the port of Liverpool, and did this condition cause the loss? And, second, if the loss was caused, not by unseaworthiness, but by faults of navigation or management, had the respondent used due diligence as required by the act? As we look at the evidence it will only be necessary to answer the first question. We have little difficulty in coming to the con-
100 clusion that the vessel was a staunch boat, properly manned, equipped and supplied; and that she was in all respects fit for the voyage, except in the one respect of which the libellant complains—the condition of the after port on the starboard side in compartment No. 3. Concerning the condition of this port at the beginning of the voyage the testimony is unsatisfactory. Some of the respondent's witnesses testify with positiveness that both covers were closed and screwed fast when the vessel sailed; and if this testimony is accepted as true it establishes the fact that the port was properly fastened. But some of the witnesses upon this point are scarcely credible, and we regard the others as mistaken. The effect of the defendant's testimony is at least balanced, if not overbalanced, by the unquestioned fact that although the ship had experienced no severe weather, and displayed no mark of injury to the port, nevertheless both covers were found open a few days after the vessel began her voyage. In our opinion, this condition of affairs can only be fairly explained, either by supposing that the witnesses who testified with such positiveness must have been mistaken, and that the port was not properly fastened when the vessel left Liverpool (although they may have honestly supposed it to be

in a proper condition); or by supposing that after the witnesses who testified that the port was closed, had seen it for the last time, the covers were opened by some unknown person. Either supposition is more probable than to suppose that the port was broken in by a violence that left no sign, or was opened by a person who forced his way into the compartment after the hatches had been battened down. We therefore find as a fact that the port in question was either not fastened at all, or was insecurely fastened, when the vessel left Liverpool. In either event it follows that the vessel was not seaworthy.

In our view of the case this finding is decisive of the controversy and accordingly we direct a decree to be entered adjudging the respondent to be liable for the damage complained of by the libellant and referring the case to a commissioner to determine the extent of the loss.

And afterwards, to wit, on the 5th day of May, A. D. 1899, the petition of the respondent for reargument of the cause is presented and on the 9th day of May, A. D. 1899, a reargument is by the court allowed and said petition being filed is in the words and figures following, to wit:

101 In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

FARR AND BAILEY MANUFACTURING CO. *vs.* INTERNATIONAL NAVIGATION COMPANY. } No. 62 of 1895.

To the Honorable John B. McPherson, judge of the said court:

The petition of The International Navigation Company, respondent, respectfully requests:

That a reargument be directed in this case by the court upon one point only which does not appear to be fully covered in the opinion filed, viz:

Assuming, as found by the court, that the port light on starboard side of No. 3 lower steerage of the S. S. "Indiana" was open or insufficiently fastened at the time the vessel sailed on her voyage, did such fact render the vessel unseaworthy under the authorities and the other facts of the case as found by the court.

It is respectfully submitted that the Supreme Court of the United States in the case of the "Silvia," 171 U. S., 462, decided that a porthole left open or insufficiently fastened at the time of sailing did not render a vessel unseaworthy provided the porthole was of easy access and could be readily fastened, if necessary. The facts in the case of the "Silvia" were precisely those of the present case in every particular except that both glass and iron covers were left open or unfastened in this case and the iron cover only in the case of the "Silvia." This difference, however, can hardly be held to decide the question of seaworthiness.

In the English cases cited in the "Silvia," which are approved by the Supreme Court (Carmichael *vs.* Liverpool Ship Owners' Association, 19 Q. B. D., 242; Dobell *vs.* S. S. Co., Ld., 2 Q. B., 408, and others), portholes of greater dimensions and equally liable to admit the water, as in the present case, open or insufficiently fastened, existed at the time of sailing. It was held under the rule of Steel *vs.* State Line, 3 Appeal Cases, 72 (also cited with approval in the "Silvia"), that the test was not whether the porthole was open or not, but whether or not it could be readily closed in order to determine the question of seaworthiness.

102 Otherwise it is difficult to see where the line could be drawn. We all know that many portholes are invariably left open on board every steamship until rough weather arises; often through an unexpected surge water enters through these and great damage is done, but no one pretends that this renders the vessel unseaworthy. The same rule is true as to many appliances which are necessary for the safety of those on board, but which need not always be rigged or placed until the necessity arises. The failure to have these precautions taken constitutes negligence in the management or navigation of the vessel (as also decided in the "Silvia") but not unseaworthiness.

Respectfully submitted.

J. RODMAN PAUL,
*For Int. Nav. Co., Resp.*

And afterwards, on the 22d day of June, A. D. 1899, the opinion of the court on the reargument of this cause being filed is in the words and figures following, to wit:

In the District Court of United States, Eastern District of Pennsylvania. In Admiralty.

FARR AND BAILEY MANUFACTURING CO.
*vs.*
INTERNATIONAL NAVIGATION CO. } No. 62 of 1895.

Upon reargument.

MCPHERSON, *J.*:

The only question to be considered upon this reargument is, whether the court was right in concluding that the vessel was unseaworthy when she left Liverpool. If the point were now presented for the first time, so that it might be decided in accordance with the reasoning that appeals most strongly to my judgment, I should adhere to the conclusion already stated.

It seems to me, that although the owners of the vessel provided the proper equipment for the porthole under consideration, and although the failure to close it properly was due to negligence in the use of such equipment, nevertheless the result was unseaworthiness, because the vessel set sail with a hole in her side that

103 was not only unknown to her officers but was believed not to exist. She was therefore not in a condition to afford due

protection to the cargo in this particular compartment. If the hol had been caused by collision while she lay at her berth and sh had been sent upon her voyage without repair it could not be suc cessfully asserted that she was seaworthy, although the proper tool and materials might have been among the ship's stores, and th failure to repair might be properly said to have been due to negli gence in failing to use the equipment at hand.

The state of affairs produced by negligence seems to me to b more important than the character of the negligent act; and there fore, if at the time when a voyage is begun there is an open port i a cargo compartment, I should incline to the opinion that one ele ment, at least, of unseaworthiness was present. This might not b decisive it is true, for another important inquiry, I think, should b this: Was it known to the proper officers that the port was eithe open or insecurely fastened? Obviously, it would be unreasonabl to require a vessel to leave her berth with all her portholes close and to keep them closed at her peril during the voyage. But porthole that is known to be open in a cargo compartment, and porthole that is mistakenly supposed to be closed when the voyag begins, are likely to receive different degrees of attention, and migh properly give rise to different degrees of liability. Such a port when known to be open, must be borne in mind by those respons ble for the care of the vessel and of her cargo, and must be promptl closed when danger threatens. Therefore, the port should be read ily accessible, so that it may be closed in a few minutes; and th ship would be unseaworthy if the cargo should be so disposed tha the port could not be easily reached. But a port in such a com partment, when mistakenly supposed to be closed, while it is actu ally open or insecurely fastened, is no longer an object of attentio or care. Whether, therefore, it be accessible or not seems to be little importance, for there is no intention to get to it for any pur pose until the voyage is over. Meanwhile the mischief may b doing. The water may be invading the compartment and dam aging the cargo, while the master of the vessel is relying upon hi mistaken belief that the porthole was closed when the voyag began.

Such a mistake, as it seems to me, is not accurately described a a fault or error in the navigation or management of the vessel Failure to close an accessible port would, no doubt, be such a faul or error in management if the port was known to be open; but the port was mistakenly supposed to be shut when the voyage wa begun this appears rather to be a fault in fitting the ship for th voyage, and a fault that is committed before the vessel sets sai The master leaves the dock with a cargo compartment supposed t be tightly closed. If he owes to the cargo a duty continuall
104 to inspect the ports and damage is done by reason of neglecte inspection such neglect might be a fault in managemen But it has not been suggested that such a duty exists under ord nary circumstances; and I do not clearly see what other duty management the master can be said to neglect. There is a duty t provide against the danger that water may enter an open port; bu

in the case supposed the master believes that the duty to close was performed before the voyage began, and has no knowledge that the port is open. If, therefore, he has no ground to suspect that the port is open and is ordinarily under no duty to inspect continually it seems more reasonable to rest his liability for whatever injury may be done upon the mistake he made in preparing the compartment for the voyage. There is some force, I think, in the suggestion that such a mistake cannot properly be called a fault or error in a navigation or management that had not then been begun. It might perhaps be said that the law regards such a mistake as repeated during every moment of the voyage; but I think this would be a subtlety of legal fiction, not necessary for the accomplishment of justice. It is no doubt true that it is not always easy to draw a line between defects that may properly be said to constitute unseaworthiness and omissions or acts that may be more properly described as faults or errors of navigation or management. Failure to provide a compass, for example, might fall into either class, and so with other instances that might be specified. But this would only be to say again what courts are continually saying, that no rule could be laid down for all cases, and for that reason I should prefer to confine my attention to the particular question before the court in a given case.

While the foregoing is perhaps a sufficient indication of the reasons that appeal to my judgment in behalf of the disputed conclusion, nevertheless I must admit that further consideration has convinced me that I am not at liberty to allow them to control the decision.

Some of the cases cited by the respondent can be distinguished without difficulty, and some are not of binding authority; but I am unable to avoid the effect of the decision in the Sylvia, 171 U. S., 462. I am afraid that I somewhat more than half shut my eyes to the facts of that case. They are strikingly like the facts in the present controversy, so like indeed, that I feel myself bound to accept the conclusions drawn from them by the Supreme Court. I obey the authority of that tribunal, therefore, and now hold that the condition of the porthole when the "Indiana" left Liverpool did not render the vessel unseaworthy. It follows that failure to close the port was a fault or error in management committed during the voyage, and that the act of 1893 relieves the respondent from liability for such a fault.

A decree will be entered dismissing the libel with costs.

105 And afterwards, to wit, on the 10th day of July, A. D. 1899, decree being entered is in the words and figures following, to wit:

In the District Court of the United States, Eastern District of Pen
sylvania. In Admiralty.

FARR AND BAILEY MANUFACTURING CO.
*vs.*
INTERNATIONAL NAVIGATION CO. } No. 62 of 1895.

And now, to wit, this 10th day of July, 1899, this case coming
to be heard on final hearing, and after reading the pleadings a
proofs and hearing the arguments of the respective proctors,
motion of J. Rodman Paul, proctor for the respondent, it is order
adjudged and decreed that the libel be dismissed, and that the
spondent The International Navigation Company, have and
cover from the libellant, The Farr and Bailey Manufacturing Co
pany, and Edward H. Kennedy, its stipulator, its costs.

And afterwards, to wit, on the 26th day of July, 1899, the lib
lants, The Farr and Bailey Manufacturing Company, by their pr
tors, Horace L. Cheyney, Esq., and John F. Lewis, Esq., pres
their petition for leave to appeal from the decree of the court
this cause, to the next United States circuit court of appeals, for t
third circuit, together with an assignment of errors, and the app
is allowed upon the usual conditions; and said appeal being fi
is in the words and figures following, to wit:

In the District Court of the United States, Eastern District of Pe
sylvania. In Admiralty.

FARR AND BAILEY MANUFACTURING CO.
*vs.*
INTERNATIONAL NAVIGATION CO. } No. 62 of 1895.

106 To the Honorable John B. McPherson, judge of the distr
court of the United States for the eastern district of Pe
sylvania:

The petition of The Farr & Bailey Manufacturing Company,
libellants, respectfully represents:

That they have heretofore filed a libel against the Internatio
Navigation Company, to recover the sum of $2,084.15, for dam
to twenty bales of burlaps, shipped on board the steamship "
diana," owned by the respondents.

That on July 10, 1899, a final decree was entered dismissing
libel and ordering the respondents recover from the petitioner,
Edward H. Kennedy, stipulator, costs to be taxed.

Your petitioner believes that said decree is erroneous and t
injustice will be done if the same should be carried into effect
leave is therefore prayed to appeal from the said decree to the
cuit court of appeals for the third circuit.

HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Proctors for Petitione*

I do hereby certify that I am proctor for The Farr & Bailey Manufacturing Company, the petitioner, and that said company has no office or agent within this district, and that the above appeal is not taken for delay.

HORACE L. CHEYNEY.

*Assignments of Error.*

1. The learned court erred in entering the decree of July 10, 1899, dismissing the libel.
2. The learned court erred in not entering a decree sustaining the libel and awarding the libellant the damages claimed.
3. The learned court erred in finding that the steamship "Indiana" was in a seaworthy condition when she left Liverpool.
4. The learned court erred in not finding the cargo was damaged by reason of the unseaworthiness of the steamship "Indiana."
5. The learned court erred in finding that the damage to the cargo was caused by an error in the management of the vessel committed during the voyage.

HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Proctors for Appellant.*

107 And on the same day the stipulation of the parties setting forth in writing what papers shall constitute the record on appeal in this cause being filed, is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Third Circuit.

FARR & BAILEY MFG. CO., Libellant, Appellant,
*vs.*
THE INTERNATIONAL NAV. CO., Respondent, Appellee.

It is hereby agreed that the following papers contained in the record as filed shall not be printed:
Stipulation for cost.
Writ of attachment.
Stipulation as to record on appeal.
Bond on appeal.
Certificate of the clerk.

HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Proctors for Appellant.*
BIDDLE & WARD,
*Proctors for Appellee.*

108 In the United States Circuit Court of Appeals for the Thi
Circuit.

THE FARR AND BAILEY MANUFACTURING COMPANY, Appellant
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Owner of the Steam
ship "Indiana," Appellee.

And afterwards, to wit, on the twenty-first day of September, A.
1899, this cause being called for argument on the transcript of r
ord from the district court of the United States for the east
district of Pennsylvania, before Hon. M. W. Acheson, Hon. Geo
M. Dallas, and Hon. George Gray, circuit judges, and being argu
by counsel for the respective parties, and the court, not being fu
advised in the premises, takes further time for consideration there

And afterwards, to wit, on the twenty-eighth day of Novemb
A. D. 1899, comes the parties aforesaid, by their counsel aforesa
and the court, now being fully advised in the premises, renders t
following opinion, to wit:

109 In the United States Circuit Court of Appeals, Third Circu
September Term, 1899.

THE FARR AND BAILEY MANUFACTURING COMPANY, Appellant,
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Appellee. } No.

Appeal from the district court of the United States for the east
district of Pennsylvania.

Before Acheson, Dallas, and Gray, circuit judges.

DALLAS, *Circuit Judge:*

By the libel filed in the court below damages were claimed
injury done by sea water to several bales of burlaps which were
ceived on board the steamship Indiana at the port of Liverp
consigned to the libellant in Philadelphia. These goods were stow
in a compartment on the lower steerage deck in such manner as
admit of free access being had to the port through which the wa
subsequently entered. This port, and others similarly situat
were inspected on the day before the vessel sailed, and they w
believed to be closed and properly fastened, but after the India
had proceeded for four or five days upon her voyage, water made
appearance in the compartment, and a day or two later investi
tion disclosed that both the glass cover and the iron dummy of
port in question were open, and that through this opening
water was admitted. There had been no severe weather, no a
dent was known to have happened, and the port, its covers, fast
ings, and surroundings, did not appear to have been in any w
broken or impaired.

The bearings upon the case thus presented of the act of Congress of July 1, 1893, known as the Harter act, is now for consideration. The third section of that act provides that "if the owner of any vessel transporting merchandise to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned,
110 equipped and supplied, neither the vessel, her owners, agents or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel."

This act has not modified the obligation of owners to furnish a seaworthy ship. The Delaware, 161 U. S., 459; the "Carib Prince," 170 U. S., 655; the "Silvia," 171 U. S., 462. Did the damage in question result from unseaworthiness? Respecting its immediate cause there can be no doubt—it was the condition of the port. Was this condition chargeable to unseaworthiness or should it be ascribed to lack of due care, skill, or judgment on the part of those engaged in navigating and managing the vessel? The definition of seaworthiness which the learned counsel for the appellee has supplied from Carver on Carriers, sec. 18, page 20, is, so far as it is here material, that "the ship must be fit in design, structure, condition, and equipment;" and, although the Indiana seems to have been structurally fit, her "condition" as respects the port in question, was, we think, palpably unfit. The learned judge of the court below found as a fact that it "was either not fastened at all or was insecurely fastened," and this finding is quite consistent with the contention of the appellee's counsel that it was not open at the time of sailing. The impression made upon us by the evidence is that it was probably closed, but, be this as it may, certain it is that it was not securely fastened, and we are of opinion that, by reason of this fact, the vessel was unseaworthy, for the conclusion is inevitable that a ship with a hole in her side, which those in charge of her navigation suppose, and have a right to assume, is tightly closed, but which, in fact, had been so inadequately fastened as to admit of its being opened by ordinary pressure of the sea, and so permit the water to flow in upon the cargo, does not "have that degree of fitness which an ordinary, careful, and prudent owner will
111 require his vessel to have at the commencement of her voyage, having regard to all the probable circumstances of it;" and "to that extent * * * the ship-owner undertakes absolutely that she is fit, and ignorance is no excuse." Carver on Carriers, *supra*. It has, however, been contended that the master of the Indiana had no right to assume that the covers of this port had been properly secured, but should himself have made timely discovery that they had not been, and therefore that his omission to have them made fast during the voyage and before the damage had been done was a fault in navigation or in management, for which the vessel is not liable. We cannot sustain this contention. The record shows that the custom was to close and securely fasten all such ports before sailing, and that in this instance this practice, except as to this one port, was effectually pursued. The master

was, of course, not responsible for the vessel's general fitness of condition, and, this being so, we are at a loss to conceive upon what ground neglect could be imputed to him by reason of his not having seen to the condition of this particular part of the ship at a time when its unfit condition had not become known to him. This case was twice argued in the court below. Upon the first occasion the learned judge directed a decree to be entered for the libellant, but upon reargument he dismissed the libel. In all that he said in support of the conclusion which he first announced we fully concur; but we are unable to acquiesce in the result which he finally reached because we cannot agree that it was rendered necessary by the decision in the case of the "Silvia," 171 U. S., 462. The facts of that case and of this one, though similar, are not precisely the same, and the differences between them, though seemingly slight, are, when considered with reference to the reasoning upon which the judgment in the "Silvia" case was founded, of con-
112 trolling importance. It was there said that "the test of seaworthiness is whether the vessel is reasonably fit to carry the cargo which she has undertaken to transport," and, applying this test, it was held that the "Silvia" was not, under the circumstances there presented, to be regarded as being unseaworthy merely because at the time of sailing, when the weather was fair, and with the glass covers tightly closed, the iron covers of some of her ports were left open to light the compartment. There was in that case, as in this one, no structural defect or omission of appliances, and the question there, as here, was only as to fitness of condition. The compartment involved contained no cargo, but only spare sails and ropes and a small quantity of stores. The ports were in a place where the iron shutters would usually be left open for the admission of light, and there was nothing to prevent or embar-rass access to them in case a change of weather should make it necessary or proper to close them. In the afternoon of the day of sailing rough weather was encountered, the glass cover of one of the ports was broken, and the water came in through the port and damaged the cargo, and this damage, it was held, was occasioned not by unseaworthiness, but by fault or error in the navigation or in the management of the ship, because the control during the voyage of everything with which the vessel is equipped for the purpose of protecting her and her cargo against the inroad of the seas is included in navigation and management, and consequently the neglect to close the iron covers of the ports was in that case ascribed to those in charge of the navigation and management, and not to those responsible for seaworthiness; but in the present case the port in question was not designedly left open, and its shutters ought not to have been left unfastened. They would not "usually be left open for the admission of light" or for any purpose.
113 They were believed by all concerned to have been securely closed, and that they would remain so throughout the voyage. It was neither intended nor expected that they would require or receive any attention at sea. It was not supposed that any control of them in the course of navigation and management would

be necessary, and no duty to exercise control existed, simply because no need nor occasion for it could have been foreseen or perceived. If, as in the "Silvia" case, the compartment in question had contained only tackle and stores, and if, as in that case, the glass cover had been closed, but the iron cover left open to admit light, it would unquestionably have been the duty of the master upon encountering rough weather to have had the iron cover closed; but he cannot be justly said to have committed either a fault or an error in omitting to remedy a defect of which he had no knowledge and for the existence of which he was in no way responsible.

The fact that in the "Silvia" case, as in this one, the cargo was not so stored as to prevent access to the port does not make the judgment in that case decisive of this one. There it was said that if the cargo had been so stored as to require much time and labor to shift or remove it in order to get at the ports the fact that the iron shutters were left open at the beginning of the voyage might have rendered the ship unseaworthy; but it was not decided that under all circumstances freedom of access to the ports of a vessel imposes upon those engaged in her navigation and management a duty to inspect them. On the contrary, it seems to us that what the court said about this matter accords with our present conclusion; for if a ship be "unseaworthy at the time of sailing by reason of the cargo having been so stowed against the open port that the port could not be closed without removing a considerable part of the cargo," it would seem that there must likewise be unsea-
114 worthiness whereever for any cause it would be unreasonable to expect the master to investigate a port which had not been fastened at the time of sailing, and that such expectation would not have been reasonable and in fact was not entertained in this case has already been shown.

The decree of the district court is reversed, and the case will be remanded to that court with direction to enter a decree adjudging the respondent to be liable for the damage complained of by the libellant, and referring the case to a commissioner to determine the extent of the loss.

115 In the United States Circuit Court of Appeals for the Third Circuit.

THE FARR AND BAILEY MANUFACTURING COMPANY, Appellant,
*v.*
THE INTERNATIONAL NAVIGATION COMPANY.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

Before Acheson, Dallas, and Gray, circuit judges.

GRAY, *C. J.*:

I cannot agree with the majority of the court in the conclusion reached by them in this case. Entirely aside from the question of the applicability of the decision of the Supreme Court of the United

States in the case of the "Sylvia," I think the owners of the Indiana, on the facts disclosed in the record, are within the exemption provided for in the 3rd section of the act of Congress known as the "Harter act." If the ship, when she left port, was not defective in structure of equipment, she was, within every reasonable definition of the term, seaworthy. There is no suggestion that her equipment in the matter of ports or dead-lights was defective. If properly equipped with hatch coverings and tarpaulins, it does not render a ship unseaworthy if they are left open or insecurely fastened. If they are, it is a fault of the navigation or management.

So, if a ship is properly equipped with anchors and the requisite tackle for stowing them, it does not render her unseaworthy if on leaving port the anchors are allowed to swing from the catheads, whereby there is danger of knocking a hole in the bows when the ship encounters head seas. It is a fault of the management and navigation to so leave them.

In the case of Headley *v.* Pinckney & Sons S. S. Co., App. Cas. 1894, 222, a ship sailed with stanchions and rails on board, but not set up as they ought to have been. A storm coming on, a 116 seaman engaged in performing his duty fell overboard in consequence of the neglect to ship the stanchions and rails and was drowned. The House of Lords held that this was a neglect of duty, but did not render the ship unseaworthy. Lord Herschell said:

"After she left port her hull and equipment remained precisely what they were at the time of her departure. She was in all respects efficiently equipped; the fault was in not making use of the equipment with which she had been furnished." * * * "The failure to properly secure many parts of the ship which are in ordinary practice open from time to time would no doubt diminish the safety of those serving on board her, and be a source of danger to them, but I do not think it could be reasonably said that because in such a case a bolt was not securely fixed the vessel therefore became unseaworthy."

The reasoning in the case of the "Sylvia," 171 U. S., 462, however, seems to me on every point applicable to the present case and to be of binding authority on this court, as it was considered to be by the learned judge of the court below. The facts in that case were precisely like those in the present case, the only difference being that in the "Sylvia" the iron cover over the port was left open, while in the "Indiana" the glass cover was left open or insecurely fastened.

I think the decree in the court below should be affirmed.

117 United States Circuit Court of Appeals for the Third Circuit, September Term, 1899.

THE FARR AND BAILEY MANUFACTURING COMPANY, Appellant,
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Owner of the Steamship "Indiana," Appellee. } No. 13.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the district court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed with costs.

And it is further ordered that this cause be remanded to the said district court, with directions to enter a decree adjudging the respondent to be liable for the damage complained of by the libellant, and referring the case to a commissioner to determine the extent of the loss.

GEO. M. DALLAS,
*Cir. Judge.*

Philadelphia, December 1, 1899.

118 United States Circuit Court of Appeals for the Third Circuit, September Term, 1899.

THE FARR AND BAILEY MANUFACTURING COMPANY, Appellant,
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Owner of the Steamship "Indiana," Appellee. } No. 13.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

And now, to wit, this second day of January, A. D. 1900, it is ordered that mandate issue to the said district court of the United States for the eastern district of Pennsylvania in accordance with the opinion and decree of this court in said cause.

GEO. M. DALLAS, *Cir. J.*

Filed January 2nd, 1900.

119 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas lately, in the district court of the United States for the eastern district of Pennsylvania, before you or some of you, in a

cause between The Farr and Bailey Manufacturing Company, ap
pellant, and The International Navigation Company, owner of th
steamship "Indiana," appellee, wherein the decree of the said distri
court entered in said cause is in the following words, viz:

"And now, to wit, this 10th day of July, 1899, the case comin
on to be heard on final hearing, and after reading the pleadings an
proofs and hearing the arguments of the respective proctors, on m
tion of J. Rodman Paul, proctor for the respondent, it is ordere
adjudged, and decreed that the libel be dismissed and that the r
spondent, The International Navigation Company, have and r
cover from the libellant, The Farr and Bailey Manufacturing Com
pany, and Edward H. Kennedy, its stipulator, its costs,
120 by the inspection of the transcript of the record of the sai
district court, which was brought into the United States ci
cuit court of appeals for the third circuit by virtue of an appe
agreeably to the act of Congress in such case made and provide
fully and at large appears;
121 And whereas in the present term of September, in th
year of our Lord one thousand eight hundred and ninet
nine, the said cause came on to be heard before the said Unite
States circuit court of appeals on the said transcript of record an
was argued by counsel:

On consideration whereof it is now here ordered, adjudged, an
decreed by this court that the decree of the said district court i
this cause be, and the same is hereby, reversed with costs, & tha
the said libellant and appellanf, The Farr and Bailey Manufactu
ing Company, recover against the said respondent and appelle
The International Navigation Company, owner of the steamshi
'Indiana,' seventy-two dollars and five cents for its costs herei
expended and have execution therefor.

And it is further ordered that this cause be remanded to the sai
district court, with directions to enter a decree adjudging the r
spondent to be liable for the damage complained of by the libellan
and referring the case to a commissioner to determine the extent
the loss.

Philadelphia, December 1st, 1899."

122 You, therefore, are hereby commanded that such exec
tion and further proceedings be had in said cause, in co
formity with the opinion and decree of this court, as according t
right and justice and the laws of the United States ought to be ha
the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of th
Supreme Court of the United States, at Philadelphia, the second da
of January, in the year of our Lord one thousand nine hundred.

WM. H. MERRICK,
*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

*Costs of Appellant.*

| | |
|---|---|
| Clerk | $19.25 |
| Printing record | 32.80 |
| Attorney | 20.00 |
| | $72.05 |

[Endorsed:] U. S. circuit court of appeals, third circuit. No. 13, Sept. term, 1899. Farr and Bailey Manfg. Co., appellant, *vs.* International Navigation Company. Mandate. Filed January 2, 1900.

123 United States Circuit Court of Appeals, Third Circuit, September Term, 1899.

*Costs of Farr and Bailey Manufacturing Company in No.* 13.

| | |
|---|---|
| 18—, Sept. term.—Docketing cause and filing record, $5.00; appearance, .50; filing precipe and receipt, .50; filing papers, $1.00 | 7 00 |
| Filing briefs, $5.00; argument, .20; judgment, $1.00; filing same, .25; recording, .40; mandate, $5.00; preparing record for printer, etc., $7.00; cost of printing record, $25.80; attorney's docket fee, $20.00; costs and copy, .40 | 65 05 |
| | 72 05 |

Fee Book 2, page 238.

Test:

WM. H. MERRICK,
*Clerk Circuit Court of Appeals, 3d Circuit.*

124 UNITED STATES OF AMERICA, *ss:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages from one to one hundred and twenty-four, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of The Farr and Bailey Manufacturing Company, appellant, *vs.* The International Navigation Company, owner of the steamship "Indiana," appellee, No. 13, September term, 1899, on file and now remaining among the records of said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this sixteenth day of January, in the year of our Lord one thousand and nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. H. MERRICK,
*Clerk U. S. Circuit Court of Appeals, Third Circuit.*

125 [Endorsed:] File No., 17,623. U. S. C. C. of appeals, 3rd circuit. Term No., 193. The International Navigation Company, petitioner, *vs.* Farr & Bailey Manufacturing Company. Filed January 29, 1900.

126 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which The Farr and Bailey Manufacturing Company is appellant and The International Navigation Company, owner of the steamship "Indiana," is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
127 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifth day of March, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

128 [Endorsed:] Supreme Court of the United States. No. 509, October term, 1899. The International Navigation Co. *vs.* Farr & Bailey Mfg. Co. Writ of certiorari.

129 In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1899.

FARR & BAILEY MANUFACTURING COMPANY, Appellant,
*vs.*
THE INTERNATIONAL NAVIGATION COMPANY, Appellee. } No. 13.

It is hereby stipulated by the respective proctors in the above case that the certified copy of the transcript of record on file in the Supreme Court of the United States shall be taken as a return to the writ of certiorari granted on March fifth, 1900, by the Supreme Court of the United States in the case of The International Navigation Company, petitioner, *vs.* Farr & Bailey Manufacturing Company, October term, 1899, No. 509.

J. RODMAN PAUL,
*Proctor for the International Nav. Co., Appellee.*
HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Proctors for Appellants.*

March 7, 1900.

130 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties, thereto annexed, as my return to the said writ.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this tenth day of March, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

WM. H. MERRICK,
*Clerk U. S. Circuit Court of Appeals, Third Circuit.*

131 [Endorsed:] File No., 17,623. Supreme Court U. S., October term, 1900. Term No., 193. The International Navigation Company, petitioner, *vs.* Farr & Bailey Manfg. Co. Writ of certiorari and return. Filed Mar. 12, 1900.